Exhibit A

EXHIBIT C

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARIA KARLA TERRAZA, Plaintiff, v. SAFEWAY INC., *et al.*, Defendants.	Case No. 3:16-cv-03994-JST
DENNIS M. LORENZ, Plaintiff, v. SAFEWAY, INC., *et al.*, Defendants.	Case No. 4-16-cv-04903-JST

EXPERT REPORT OF STEVEN K. GISSINER

May 22, 2018

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I. QUALIFICATIONS

1. My name is Steven Gissiner, and I have worked in the retirement plan services industry for approximately 37 years in a variety of roles, including serving as the lead consultant (relationship manager) for a wide range of defined contribution plan engagements and managing teams providing retirement plan administrative services[1] for clients with retirement plans ranging in size from less than 100 participants to more than 50,000 participants. In addition to providing administrative services to clients, I have consulted with (and continue to do so to this day) clients in the areas of retirement plan design, compliance, administrative procedures, employee communications, and investment education services. With the exception of retirement plan administration, I provide these services to a broad range of clients, including a number of Fortune 500 companies and healthcare entities.

2. In addition to the aforementioned consulting services, I currently consult with clients in the areas of retirement plan cost determination and fee benchmarking, assist plan sponsors and retirement plan committees in understanding and implementing administrative fee arrangements, develop and distribute Requests for Proposals ("RFPs") for retirement plan administrative services, consult with plan committees and investment advisors that have responsibility for monitoring the performance of plan investment funds, and provide consulting and expert witness services in the area of retirement plan fee litigation.

3. Over the course of my career, I have consulted with hundreds of retirement plan sponsors with retirement plan arrangements ranging in size from less than $5 million in assets to just below $9 billion in assets. My experience includes working with a wide range of businesses

[1] Throughout my report, I use the term "administrative services" to refer to a broad range of non-investment management services, including recordkeeping, provided to retirement plans. *See* **Section V.A**.

administering retirement plans, including mutual fund companies, banks, insurance companies, and consulting firms.

4. After approximately four years of employment with two banks that provided investment management and administrative services for retirement plan clients, I joined Coopers & Lybrand in 1985 as a Consultant in the Retirement Plans Practice where my responsibilities at that time were specific to the administration of defined contribution plans. I advanced through the firm and became a Partner in 1995, assuming responsibility for the management of the Western Region Administrative Outsourcing Practice, which included defined contribution and defined benefit plan administration.

5. During the 1985–2001 period, Coopers & Lybrand, as a stand-alone organization and then as a larger entity following the acquisition of the benefits consulting firm of Kwasha Lipton (and then later following the merger with Price Waterhouse, whereby the merged entity was renamed PricewaterhouseCoopers),[2] was a significant provider of defined contribution administrative, consulting, employee communications, and total benefits (pension administration, health and welfare plan administration) outsourcing services.[3] Coopers & Lybrand (later PricewaterhouseCoopers) did not provide investment management or trust custody services, meaning that it was common for certain of our defined contribution plan servicing arrangements to be structured using revenue sharing payments to provide compensation for all or a portion of the administrative, compliance, and employee communications services provided to participants and the plan sponsor.

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[2] PricewaterhouseCoopers, "History and Milestones."

[3] In its fiscal year ending June 2001, PricewaterhouseCoopers' administrative servicing business, branded as Unifi, had revenues of $351 million and approximately 2,100 employees. *See* AccountingWEB, "Mellon Acquires PwC Unit for $275M," November 30, 2001; Investment & Pensions Europe, "Mellon buys out PwC HR consulting subsidiary," November 29, 2001.

6. In 2001, the firm, now known as PricewaterhouseCoopers, sold its retirement plan administrative servicing business to Mellon/Buck Consultants. Prior to the sale of the business, I elected to leave the firm and, in March of 2001, was directly admitted as a Partner in the Human Capital Practice of Arthur Andersen. Although Arthur Andersen did not offer retirement plan administrative services, the firm provided retirement plan consulting, compliance, and investment advisory services to a wide range of clients.

7. The Human Capital Practice of Arthur Andersen was acquired by Clark/Bardes, Inc. (d/b/a Clark Consulting) in May of 2002.[4] Clark Consulting provided retirement plan and compensation consulting services, in addition to administering non-qualified retirement plans. As a Senior Vice President at Clark Consulting, I established the firm's retirement plan cost benchmarking services and, with the assistance of others at the firm, marketed these services to current and prospective clients throughout the country. During this period, in addition to performing a substantial number of retirement plan cost benchmarking projects, I was involved in various RFP projects performed on behalf of clients with defined contribution retirement plans.

8. In December 2003, I established an independent contractor arrangement with Clark Consulting, pursuant to which I continued to provide consulting services to new and existing clients. These services were performed within the structure of my own limited liability company, Orchard Hills Consulting ("OHC").

9. In my approximately 37-year career, I have managed (in a relationship management or consulting role) more than 1,000 separate defined contribution plan servicing arrangements, completed approximately 500 retirement plan cost and fee benchmarking studies for clients,

[4] Crain's Chicago Business, "Andersen Partners Join Clark/Bardes," May 17, 2002.

performed in excess of 150 RFP projects specific to the provision of defined contribution administrative services, and managed teams of individuals (at one point, as many as 60) providing administrative, compliance, and consulting services to a wide range of clients and plans. My experience in managing defined contribution plan engagements, performing fee benchmarking studies, and completing RFP projects has provided me with a high level of knowledge with respect to how defined contribution plans are serviced and how plan sponsors and service providers work on a collaborative basis to structure fee arrangements that correspond to the unique demographics of each individual plan sponsor.

10. I have included a recent CV as **Appendix A**, which contains more detail on the above.

II. ASSIGNMENT

11. I have been retained by Trucker Huss, APC ("Counsel"), counsel for the Safeway Benefit Plans Committee (the "Plan Committee" or "Committee"), Safeway Inc., and the individually named defendants (collectively, "Safeway") in connection with the matters *Maria Karla Terraza v. Safeway Inc., et al.* and *Dennis M. Lorenz v. Safeway, Inc., et al*.[5]

12. I understand that Plaintiff Terraza and Plaintiff Lorenz (collectively, "Plaintiffs") are former participants in the Safeway 401(k) Plan (the "Safeway Plan" or the "Plan").[6] I understand that Plaintiff Terraza alleges, among other things, that Defendants "[allowed] unreasonable expenses to be charged to participants for administration of the Plan,"[7] and that

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[5] *Maria Karla Terraza v. Safeway Inc., et al.*, Second Amended Complaint, March 31, 2017 ("Terraza Complaint"); *Dennis M. Lorenz v. Safeway, Inc., et al*., Third Amended Complaint, March 31, 2017 ("Lorenz Complaint").

[6] Terraza Complaint, ¶ 7; Lorenz Complaint, ¶ 8. Plaintiff Terraza no longer maintained an account balance in the Plan as of March 2015. (Terraza Statement, January 1, 2015 to March 31, 2015 (SWY_TR00003712 - SWY_TR00003717, at 712).) Plaintiff Lorenz no longer maintained an account balance in the Plan as of July 2016. (Lorenz Statement, July 1, 2016 to July 27, 2016 (SWY_LZ00000181 - SWY_LZ00000184, at 181).)

[7] Terraza Complaint, ¶ 4.

"the Safeway Plan is an enormously expensive plan in terms of total plan cost when compared to defined contribution retirement plans of similar size."[8] Further, I understand that Plaintiff Lorenz alleges, among other things, that the fees paid for recordkeeping services provided to the Safeway Plan were "far in excess of the reasonable value of such services."[9]

13. I have been asked by Counsel to evaluate the fees for administrative services and the total plan costs paid in connection with the Safeway Plan over the period July 2010 through July 2016 (the "Review Period").[10] In particular, and given my experience with and knowledge of industry standards and practices in the retirement plan services industry, Counsel has asked me to opine on the following:

a. Evaluate the reasonableness of the fees paid to J.P. Morgan Retirement Plan Services ("JPMRPS") and, after its acquisition, Great-West Financial Retirement Plan Services ("Great-West RPS"; also known as Empower) for administrative services provided to the Safeway Plan and the manner in which such fees were paid, including in the form of revenue sharing payments and asset-based fees applied to non-revenue sharing investment options;[11] and

b. Evaluate the reasonableness of the total costs specific to the Safeway Plan.

14. My compensation for services provided on behalf of counsel is $525 per hour. This

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[8] Terraza Complaint, ¶ 49.

[9] Lorenz Complaint, ¶ 4. I understand that Plaintiff Lorenz's allegations are limited to the "'target date funds' managed by non-defendant JP Morgan Asset Management" (*i.e.*, the J.P. Morgan SmartRetirement Passive Blend Funds). (Lorenz Complaint, ¶ 2.)

[10] *See, e.g.*, Terraza Complaint, ¶ 34. *See also* Lorenz Complaint, ¶ 18 ("Starting in 2011 and continuing until July 2016, the Plan offered as investment options target date funds managed by JPM.")

[11] As I discuss later in my report, the Safeway Plan offered non-revenue sharing investment options to which asset-based fees were applied. For ease of reference, elsewhere in my report, I use "revenue sharing" to refer to both revenue sharing applied to investment options with revenue sharing and asset-based fees applied to non-revenue sharing investment options.

compensation is not contingent on the nature of my findings or the outcome of this litigation. I have been assisted in this matter by the staff of Analysis Group, who worked under my direction. In preparing this report, I relied on my professional experience as well as data and documents produced in discovery, deposition testimony, and publicly-available documents. A list of the materials that I have considered in preparing this report is attached as **Appendix B**. My analysis and conclusions are based on the information available at present. If additional information, testimony, expert reports, or other materials become available, I reserve the right to supplement my opinions and analysis as appropriate.

III. SUMMARY OF OPINIONS

15. In order to evaluate the reasonableness of fees paid to administrative service providers, one must consider, among other things, the range of services provided in exchange for such fees.

a. Based on my experience reviewing and advising on administrative services provided to defined contribution plans, the breadth of services provided by JPMRPS and Great-West RPS to the Safeway Plan exceeded those typically provided by administrative service providers.

b. For the administrative services provided to the Safeway Plan, JPMRPS and Great-West RPS received fixed, per participant fees, which decreased from $67 to $52 per participant over the Review Period. Regardless of the amount of revenue sharing collected, JPMRPS and Great-West RPS received the contractual fixed, per participant fee delineated in the Master Service Agreement ("MSA") and subsequent amendments to the MSA. Indeed, the Safeway Plan established the Plan Expense Arrangement ("PEA") account and ERISA Spending Account ("ESA") wherein amounts collected via revenue sharing in excess of JPMRPS

and Great-West RPS' fixed, per participant fees could be accrued.

16. Based on my benchmarking analysis and review of the Safeway Plan, the Plan's total costs and administrative fees paid to JPMRPS and Great-West RPS were reasonable and well within the range of costs paid by comparable plans, including plans that I identified during the course of my work with OHC ("OHC Plans"); plans identified by Aon Hewitt ("Hewitt"), formerly known as Hewitt Ennisknupp, the Committee's investment advisor throughout the Review Period,[12] in its analysis of the Safeway Plan's total costs; and plans identified in industry surveys with comparable plan assets and participant counts.

a. When assessing the reasonableness of retirement plan costs and interpreting the results of a fee benchmarking comparison analysis, it is important to consider the following: (1) total plan cost benchmarking exercises should consider investment decisions made by plan participants, which are unrelated to decisions made by the plan sponsor or plan fiduciaries regarding fund choices offered to plan participants; (2) benchmarking analyses of per participant administrative fees should consider each plan's unique servicing requirements, which vary by plan; and (3) benchmarking analyses are not intended to determine the specific costs associated with operating a plan.

b. *Total Plan Costs as a Percentage of Plan Assets*: Benchmarking analysis of the Safeway Plan indicates that its total plan costs were reasonable and within the range of total costs for comparable defined contribution plans. Specifically, the Safeway Plan's estimated total plan costs were: (1) consistent with those of the

[12] Hewitt provided research and investment advice, including quarterly performance reviews, to the Committee to aid its management and administration of the Plan. *See, e.g.*, Master Consulting Agreement (AON0042140 - AON0042146); Safeway Quarterly Investment Review, 2Q 2016 (SWY_TR00018339 - SWY_TR00018400).

OHC Plans in 2010 and 2011 (0.46% and 0.42% for the Plan, respectively, compared to between 0.36% to 0.73% for the OHC Plans), 2012 through 2014 (ranging from 0.36% to 0.42% for the Plan during this period, compared to 0.25% to 0.59% for the OHC Plans), and 2015 and 2016 (0.45% and 0.44% for the Plan, respectively, compared to 0.18% to 0.59% for the OHC Plans); (2) below the median total plan costs for "best-fit" plans identified by Hewitt in its 2012 analysis of the Safeway Plan's total costs; (3) less than the median total cost of plans reported by NEPC, which surveys plan sponsors of plans generally comparable to the Safeway Plan,[13] from 2010 through 2015, and slightly higher (by 1 basis points, or 0.01 percentage points) than the median total cost reported by NEPC in 2016; (4) within the range of total plan costs for comparable defined contribution plans (in terms of plan assets or participant counts) in BrightScope/ICI and Deloitte/ICI surveys;[14] and (5) less than or equal to the average total plan costs reported in a publicly available 2014 Hewitt survey.

c. *Per Participant Administrative Fees*: The Safeway Plan's administrative fees were also reasonable and within the range of per participant administrative fees for comparable defined contribution plans. Specifically, the Safeway Plan's per participant administrative fees were: (1) consistent with those of the OHC Plans in

[13] The NEPC "conducts an annual Defined Contribution Plan & Fee Survey [] to help plan sponsors, or employers, understand the fees, pricing and structure of their defined contribution plans." In the 2014 NEPC survey of 113 plans, for example, the average plan had $1.1 billion in assets and 12,091 participants. The median plan had $495 million in assets and 6,545 participants. (Cress, K., "State Universities Retirement System of Illinois: NEPC DC Plan and Fee Survey & Self-Managed Plan Update," September 18, 2014, at pp. 1, 2.)

[14] The BrightScope/ICI and Deloitte/ICI surveys present the range of total plan costs at the 10th and 90th percentiles, which results in the exclusion of outliers.

2010 and 2011 ($67 and $65 for the Plan, respectively, compared to $58 to $116 for the OHC Plans), 2012 through 2014 ($65 for the Plan, compared to $50 to $110 for the OHC Plans), and 2015 and 2016 ($52 for the Plan, compared to $26 to $62 for the OHC Plans); (2) "slightly above"[15] the median per participant administrative fees for "best-fit" plans identified by Hewitt in its 2012 analysis of the Safeway Plan's total costs (*i.e.*, $56 per participant for "best-fit" plans, compared to $65 per participant for the Safeway Plan); (3) less than the median per participant administrative fees reported by NEPC in every year of the Review Period, which were $103 per participant in 2010 and 2011, ranged from $70 to $92 per participant from 2012-2014, and were $64 and $57 per participant in 2015 and 2016, respectively; and (4) less than the average per participant administrative fees reported in a publicly available 2014 Hewitt survey.

17. Contrary to Plaintiff Terraza's allegation that the Safeway Plan should have "rebalance[d] revenue sharing payments to engage in fee equalization for participants,"[16] the existing administrative fee arrangement with JPMRPS and Great-West RPS benefitted Plan participants with smaller balances in the form of lower administrative fees.

a. Revenue sharing benefits smaller balance, typically newly eligible participants, whereas "fee equalization" benefits larger balance, typically longer service participants.[17] Plaintiff Terraza fails to consider that a newly enrolled Plan

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[15] Hewitt Ennisknupp, "401(k) Total Plan Cost Analysis," January 2012 (AON0039831 - AON0039842, at 840).

[16] Terraza Complaint, ¶ 68.

[17] Also known as "fee leveling," "fee equalization" involves the implementation of a fixed administrative fee and the reallocation of revenue sharing credits to the individual retirement accounts of plan participants. Plaintiff Terraza alleges that the Safeway Plan "never has engaged in any effort to rebalance revenue sharing payments to engage in fee equalization for participants and, as a result, participants in expensive investments that pay more in terms of

participant who has just begun to contribute to the Safeway Plan would benefit from an asset-based fee arrangement, and that the proposed "fee equalization" would "discriminate" against shorter service participants.

b. Further, Hewitt's review of the Safeway Plan's fee disclosures and an examination of Plaintiffs' account statements demonstrate that Plan participants were provided with sufficient fee disclosures. The Plan Committee's Meeting Minutes state that Hewitt "offered the opinion that Safeway has done an excellent, perhaps best-in-class, job of making fee disclosures to participants."[18] In addition, each of Plaintiffs' statements reported, among other things, fee amounts debited from their accounts and the expense ratios of each of the investment options.[19]

IV. BACKGROUND

A. The Safeway Plan

18. The Safeway Plan is a defined contribution 401(k) retirement plan for eligible Safeway employees.[20] Safeway is the plan sponsor and has discretionary responsibility for the administration of the Safeway Plan.[21] The Plan Committee is a named fiduciary of the Safeway

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revenue sharing payments indirectly subsidize those participants who choose less expensive investment options that pay little or no revenue sharing payments." (Terraza Complaint, ¶ 68.)

[18] Plan Committee Meeting Minutes, March 21, 2011 (SWY_TR00016232 - SWY_TR00016235, at 234).

[19] *See, e.g.*, Terraza Statement, January 1, 2010 to March 31, 2010 (SWY_TR00003672 - SWY_TR00003681, at 673, 675-677).

[20] Safeway 401(k) Plan, 2005 Restatement (SWY_TR00006723 - SWY_TR00006792, at 723).

"The Plan is a defined contribution plan which generally covers employees of Safeway Inc. (the "Company") who are age 21 or older, excluding those employees who are eligible to participate in the Dominick's Finer Foods, LLC 401(k) Retirement Plan for Union Employees, the Safeway 401(k) Savings Plan or the Vons Companies, Inc. Pharmacists' 401(k) Plan." (Safeway Inc. Form 5500, 2010, Notes to Financial Statements, at p. 4.)

[21] Safeway 401(k) Plan, 2005 Restatement (SWY_TR00006723 - SWY_TR00006792, at 775-776); Master Services

Plan, and has "full discretionary authority" to administer the Plan by, among other things, establishing necessary rules and regulations, employing persons necessary to administer the Plan, and interpreting the Plan.[22]

19. Relative to other 401(k) plans, the Safeway Plan is above the 99th percentile in terms of both the number of participants with account balances and total assets.[23] As shown in **Exhibit 1**, the Plan had between approximately 35,000 and 40,000 participants during the Review Period, and Plan assets ranged between $1.4 billion and $1.9 billion.

20. The Safeway Plan offered a wide range of investment options to Plan participants. The nine to 10 investment options offered during each year of the Review Period included a mix of equity, fixed income, asset allocation (target retirement date), and stable value investment options that spanned the risk-return spectrum.[24] Plan investment options included actively-managed and passively-managed (or index) mutual funds, commingled funds, and separate accounts. In addition, participants were able to invest in Safeway common stock.[25] **Exhibit 2** summarizes the various investment options offered to Plan participants, as well as the assets invested in each option, between 2010 and June 2016. **Exhibit 3** summarizes the expense ratios and revenue sharing percentages associated with each investment option over the Review Period.

Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 674).

[22] "Except to the extent that the Company otherwise provides, any delegation of duties to the Committee shall carry with it the full discretionary authority of the Administrator to complete such duties." (Safeway 401(k) Plan, 2005 Restatement (SWY_TR00006723 - SWY_TR00006792, at 776, 786-787).)

[23] According to the Department of Labor's database of defined contribution plans, in 2012, 1,641 401(k) plans had 5,000 or more participants, and 920 401(k) plans had $500 million or more in plan assets. (BrightScope/ICI, "The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans," December 2014, at pp. 11, 13.)

[24] *See* **Exhibit 2**. The target date funds (*i.e.*, the BlackRock LifePath Index funds and J.P. Morgan SmartRetirement Passive Blend Income funds) have been counted as a single investment option.

[25] The Safeway Stock Fund ceased to be an investment option effective April 1, 2015 following Safeway's merger with Albertsons. (Twenty-Seventh Amendment to the 2005 Restatement of the Safeway 401(k) Plan (SWY_TR00004873 - SWY_TR00004881, at 873.)

B. JPMRPS and Great-West RPS

21. Effective January 1, 2009, Safeway entered a Master Services Agreement ("MSA") with JPMRPS, whereby JPMRPS would provide administrative services to the Safeway Plan.[26] On September 2, 2014, Great-West Financial completed its acquisition of JPMRPS, and effective July 1, 2014, Great-West RPS assumed responsibility for providing administrative services to the Safeway Plan under the brand Empower Retirement ("Empower").[27]

22. In January 2015, Safeway completed its merger with Albertsons, and in July 2016, the assets of the Safeway Plan were combined with those of the Albertsons Master Trust.[28] Merging the assets in the Safeway Master Trust of approximately $1.8 billion (over 95% of which consisted of assets in the Safeway Plan[29]) with the assets in the Albertsons Master Trust of

[26] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715). The MSA described the administrative services that JPMRPS would provide to the four plans that composed the Safeway Master Trust: the Plan, the Safeway 401(k) Savings Plan, Dominick's Finer Foods, LLC 401(k) Retirement Plan for Union Employees, and the Vons Companies, Inc. Pharmacists' 401(k) Plan. (Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 674, 687, 690).)

Effective January 1, 2009, Safeway also entered a Master Trust Agreement ("MTA") with J.P. Morgan Chase ("JPM Chase"), whereby JPM Chase would provide trustee services to the Safeway Master Trust. *See* Amendment and Restatement of Master Trust Agreement for the Safeway Inc. Defined Contribution Plans between Safeway Inc. and J.P. Morgan Chase Bank, N.A., effective January 1, 2009 ("JPM Chase MTA"; SWY_TR00000716 - SWY_TR00000751, at 719). *See also,* Safeway Inc. Form 5500, 2009, Notes to Financial Statements, at p. 4.

For certain investment options, asset-based fees were applied at the Master Trust level (*i.e.*, across the four plans in the Master Trust). For these funds, the "annual fees" to the investment manager, JPM Chase, and/or JPMRPS were outlined in the JPM Chase MTA, Schedule A (SWY_TR00000716 - SWY_TR00000751, at 749-751) and Memorandum re. Master Trust Agreement for the Safeway Inc. Defined Contribution Plans, effective July 16, 2011 (SWY_TR00038681). As previously discussed, for ease of reference, I use "revenue sharing" to refer to both revenue sharing applied to investment options with revenue sharing and asset-based fees applied to non-revenue sharing investment options.

[27] Great-West Lifeco, "Great-West Lifeco's U.S. Subsidiary Completes Acquisition of J.P. Morgan Retirement Plan Services," September 2, 2014; Amendment to Master Services Agreement, effective July 1, 2014 (SWY_TR00000645 - SWY_TR00000646); Safeway Inc. Form 5500, 2014, Notes to Financial Statements, at p. 6.

Effective August 28, 2015, Great-West Trust Company, LLC ("Great-West Trust") replaced JPM Chase as the provider of trustee services to the Safeway Master Trust. (Amendment to the Master Trust Agreement, effective August 28, 2015 (SWY_TR00000647 - SWY_TR00000648.)

[28] Safeway, "Albertsons and Safeway Complete Merger Transaction," January 30, 2015; Safeway Inc. Form 5500, 2016, Notes to Financial Statements, at p. 11.

[29] As of June 2016, the Safeway Plan had approximately $1.79 billion in assets, while the Vons Company

approximately $3.2 billion resulted in combined assets of approximately $5 billion.[30] In addition, the number of participants with account balances increased significantly; compared to the approximately 35,000 participants with account balances in the Safeway Plan in 2016,[31] the combined plans following the Safeway/Albertsons merger were expected to have approximately 95,000 participants with account balances.[32] In July 2016, Vanguard and Vanguard Fiduciary Trust Company (together, "Vanguard") replaced Great-West RPS and Great-West Trust as the recordkeeper and trustee, respectively, for the Plan.[33]

V. OVERVIEW OF DEFINED CONTRIBUTION PLANS

A. 401(k) Plans and Services Provided to Plan Participants

23. An employer-sponsored 401(k) retirement plan is a valuable employee benefit that provides tax-advantaged investment opportunities to enable participants to accumulate assets that are used to generate income during retirement. More specifically, a 401(k) plan is a type of defined contribution plan that does not guarantee a specific benefit at retirement, but rather defines the contribution methodology (hence the term "defined contribution plan"). Employees

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Pharmacists 401(k) Plan had approximately $60 million in assets (Safeway Inc. 401(k) Plan Quarterly Investment Review, Q2 2016 (SWY_TR00018339 - SWY_TR00018400, at 351-352).

[30] Aon, "Albertsons & Safeway DC Investment Structure," March 2016 (SWY_TR00018177 - SWY_TR00018251, at 180); **Exhibit 1**.

[31] *See* **Exhibit 1**.

[32] The Vanguard Recordkeeping MSA assumed 95,000 active and term-deferred participants. (Amended and Restated Administrative and Recordkeeping Master Services Agreement between Vanguard and Albertsons, Exhibit B-1: Schedule B Assumptions, effective July 1, 2016 (SWY_TR00000755 - SWY_TR00000879, at 755, 791).)

[33] Amended and Restated Administrative and Recordkeeping Master Services Agreement between Vanguard and Albertsons, effective July 1, 2016 (SWY_TR00000755 - SWY_TR00000879, at 755, 792).

Plaintiff Terraza states that "an analysis conducted in 2016 regarding a change from Empower to Vanguard… demonstrated that [total plan costs] could be reduced by 32.6% with the costs of the Plan reduced by over 33% and more than $2.5 million is savings per annum." (Terraza Complaint, ¶ 50.) However, Plaintiff Terraza's claim fails to consider the new size of the combined Safeway and Albertsons plans (in terms of both assets and number of participants) and the services provided by Vanguard relative to those of Great-West RPS.

who choose to participate in 401(k) plans direct a portion of their salaries (up to IRS limits) to their accounts and allocate their contributions among the available investment options in their plan. Plan sponsors may, but are not required to, provide employer contributions (matching amounts) that are typically defined as a percentage of employee contributions. A participant's account balance in the 401(k) plan increases in value from employee and employer contributions. Accounts also appreciate or depreciate in value from investment performance, and decrease in value from in-service withdrawals, distributions, and fees. Upon termination of employment or retirement, the participant is entitled to receive the vested value in his or her account, and may elect, if permitted by the plan, various options for the payment of benefits.

24. The benefits that are ultimately received by participants in defined contribution plans are impacted by a number of factors, including the length of time that a participant contributes to the plan, how much the participant elects to contribute, the amount of employer contributions received by the participant, whether the participant elects to receive in-service withdrawals or loans while employed, investment returns, and fees. With respect to investments, participants in 401(k) plans must make their own decisions regarding how to invest plan contributions, and these decisions have a substantial impact on the benefits received at termination of employment or retirement.

25. 401(k) plans require a variety of services to be performed, including investment management services and administrative services, such as recordkeeping, employee communications, employee investment education, annual testing, trust custody, and plan compliance services. Investment management and administrative services can be provided by the same service provider or different service providers, as described in more detail below. Typically, investment management services account for the majority of total plan costs (that is,

the costs of managing the underlying funds in which participants may choose to invest, as discussed further below).[34] Non-investment management services include various administrative or operational services, including the following[35]:

a. *Recordkeeping and Transaction Processing*. These services include maintaining individual participant records specific to plan balances by fund, processing payroll files and directing contributions to participant-selected investments, and administering and executing daily transactions directed by participants. These transactions include changes in investment allocations, transfers of investments between funds, loan requests and repayments, payments requested by terminated and retired participants, and processing in-service withdrawals.

b. *Data Management*. These services include maintaining employee demographic information (birth, hire, rehire, and termination dates, along with address information, contribution and investment elections, and hours of service data) for both active and terminated employees.

c. *Plan Design/Documentation*. These services include consulting with the plan sponsor on the design of the plan and preparing plan documents (if using the provider's prototype or volume-submitter plan) and related participant and plan sponsor disclosures.

d. *Plan Amendments/Regulatory Updates*. These services include updating plan documents, participant disclosures, and related forms to correspond with new

[34] According to Deloitte/ICI's 2011 study, asset-based investment fees make up, on average, 84% of total "all-in" fees. (Deloitte/ICI, "Inside the Structure of Defined Contribution/401(k) Plan Fees: A Study Assessing the Mechanics of the 'All-In' Fee," November 2011, at p. 20.)

[35] *See, e.g.*, Collins, S., et al., "The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, 2016," *ICI Research Perspective* 23, No. 4, June 2017, at p. 3.

legal and regulatory requirements and changes requested by the plan sponsor.

e. *Approving Transactions*. Plan loans, distributions, and withdrawals are subject to legal and regulatory requirements, in addition to plan-specific procedures, and service providers are typically responsible for ensuring that these transactions are processed in accordance with these requirements and procedures.

f. *Compliance*. These services include conducting the various tests that must be performed annually to ensure that plans do not discriminate in favor of highly compensated employees or provide benefits that exceed permissible legal and regulatory requirements. In addition, service providers are typically responsible for completing annual Form 5500 filings and related schedules that accompany audited financial statements.

g. *Communications/Investment Education*. Retirement plan service providers offer participants retirement planning tools and software in addition to various forms of investment education and managed account services. These resources are often made available on a dedicated plan website, through in person meetings with service provider personnel, through online inquiries to service provider personnel, and/or through telephone call centers staffed by service provider personnel.

h. *Consulting/Special Services*. Service providers are often responsible for performing an array of tasks related to plan mergers resulting from acquisitions, distributing assets in the event of a divestiture of a portion of a company, changing administrative procedures to accommodate plan design modifications or updated legal and regulatory requirements, adding or deleting investment options, and correcting errors when required.

26. As the above list helps illustrate, 401(k) plans are complicated to administer. Administrative service providers invest substantial amounts in technology and personnel in order to provide accurate and timely services that, in addition to high levels of customer service, can vary substantially by plan sponsor. For example, Safeway is a retail organization that, in 2010, had 1,694 separate store locations.[36] The number of separate store locations, coupled with high levels of employee turnover,[37] substantially increases administrative complexity. When 401(k) plans have multiple locations and high levels of turnover, the responsibilities of the service provider with respect to determining eligibility, providing enrollment materials, obtaining contribution and investment elections, and monitoring employees that transfer between locations increase substantially. In addition, high turnover rates also result in increased responsibilities with respect to fulfilling distribution payment forms and processing distributions. New hire and termination activity also impacts the process of posting contributions each pay period, a process that must be performed with no margin for error. For example, the contributions posted to the participant database each pay period, by account type and by investment fund, must balance to control totals reported on the payroll file. Each business day, after all transactions are processed for that day and investment gains or losses are determined, the balances in plan participants' accounts must balance to the amount of assets held by the plan. In a defined contribution individual account plan, each and every dollar must be accounted for each and every business day. The greater the total assets in the plan, the greater the potential liability a service provider faces if these transactions are processed incorrectly.

[36] Statista, "Safeway's Total Number of Stores Worldwide from 2007 to 2013".

[37] According to the 2010 actuarial valuation supplement included in the 2011 Form 5500 filing for the Safeway Employee Retirement Plan, turnover rates used for actuarial assumptions were as high as 45% for "retail" employees, and 16% for "backstage" employees. (Safeway Inc. Employee Retirement Plan, Form 5500, 2011, at Appendix A: Actuarial Assumptions and Methods - Turnover.)

27. Due to the variety of services provided or available, the volume of transactions, and the need to protect the security of participant accounts, providing administrative services to plans is a resource- and investment-intensive business. For example, according to the National Association of Plan Advisors, it can cost large administrators more than $50 million annually "just to maintain" their existing technology, while relatively minor upgrades can easily double that cost.[38] Indeed, provisions in the MSA with JPMRPS allowing for the recovery of "Start-Up Costs" were indicative of the substantial upfront investments that providers make when servicing large 401(k) plans.[39] Specifically, the MSA stated that should the Safeway Plan terminate its service arrangement for reasons other than the "material breach" of the MSA by JPMRPS, JPMRPS would be able to recover its "un-recouped start-up costs with respect to the Plan."[40] It is important to note that numerous providers (*e.g.*, Cigna, The Hartford, TowersWatson, Mercer, New York Life, CitiStreet, and Putnam[41]) have been sold or exited the business due, in part, to poor economics and the inability to invest in the technology necessary to maintain a high level of customer service.[42] Indeed, J.P. Morgan exited the recordkeeping business in 2014 after its sale

[38] National Association of Plan Advisors, "DC National Record Keepers," March 10, 2014.

[39] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 678).

[40] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 678). These recovery amounts were $485,000 in the first year, $320,000 in the second year, and $160,000 in the third year following the effective date of the MSA (*i.e.*, January 1, 2009). Consistent with typical industry practices, JPMRPS did not impose a conversion or implementation fee, meaning that its "start-up costs" were recovered in recurring administrative fees.

[41] Iacurci, G., "Transamerica to buy Mercer's defined-contribution record-keeping business," *Investment News*, September 25, 2015; Moore, R., "John Hancock Acquires New York Life Retirement Business," *Plansponsor*, December 23, 2014; Adams, N., "CitiStreet Sold to ING for $900 Million," *Planadviser*, May 2, 2008; Steyer, R., "Putnam/Great-West union gets high marks," *Pensions and Investments*, March 31, 2014; "MassMutual Completes Acquisition of The Hartford's Retirement Plans Business," *PR Newswire*, January 2, 2013; Treaster, J.B., "Cigna Sells Its Retirement Business," *The New York Times*, November 18, 2003; "Willis Group and Towers Watson Announce Merger to Create Leading Global Advisory, Broking and Solutions Firm," *Business Wire*, June 30, 2015.

[42] Massena, A., "The Future of the Recordkeeping Industry," September 2015, at p. 2.

of JPMRPS to Great-West Financial, after which Great-West RPS became the recordkeeper for the Safeway Plan.[43]

28. Based on my experience reviewing and advising on administrative services provided to defined contribution plans, the breadth of services provided by JPMRPS and Great-West RPS to the Safeway Plan exceeded those typically provided by administrative service providers. In **Section VI**, I describe in further detail those administrative services provided by JPMRPS and Great-West RPS to the Plan, including those indicative of an enhanced level of service.

B. Components of Defined Contribution Plan Costs

29. Defined contribution retirement plans, including 401(k) plans, have six primary cost components which can be categorized as investment management costs or administrative costs (*i.e.*, costs related to recordkeeping; communications and investment education; compliance; consulting, auditing, and investment advisory; and participant-directed transactions). These six costs are defined as follows:

a. *Investment Management Costs*. These costs are specific to the management of a fund selected by a plan participant and include fees paid to the investment adviser (either an external adviser or an affiliate of the fund company), fund administrative fees, and marketing or distribution fees. Plan participants pay these fees in the form of an expense ratio applied to the fund.

b. *Recordkeeping Costs*. These costs are specific to providing recordkeeping services to the plan including, but not limited to, the processing of participant and

[43] J.P. Morgan Asset Management, "J.P. Morgan Signs Agreement to Sell its Large-Market 401k Recordkeeping Business, J.P. Morgan Retirement Plan Services, to Great-West Financial," April 3, 2014; Amendment to Master Services Agreement, effective July 1, 2014 (SWY_TR00000645 - SWY_TR00000646).

plan sponsor transactions, determining and allocating investment gains and losses, and reporting plan activity to participants and the plan sponsor. Plan participants also typically pay these costs, although there are instances where costs are shared with or borne by the plan sponsor.[44]

c. *Communications/Investment Education Costs*. Retirement plan service providers are normally responsible for providing information to participants upon joining the plan and on a recurring basis. Communications materials may include plan brochures, investment fund information and fund prospectuses, investment education materials, and government-required disclosures. Communications-related costs also may include website and call center maintenance and operation. Although it is common for the costs of these services to be included in the administrative fees referenced in (b) above, there may be separate charges depending on the nature of the service arrangement. For example, a service provider could elect to impose printing and mailing charges for the distribution of materials to participants or impose additional consulting fees for special communications initiatives or costs associated with a plan merger or acquisition.

d. *Compliance Costs*. These costs are associated with annual testing, Form 5500 preparation and the completion of required schedules, and related activities necessary to ensuring that the plan is in compliance with its provisions and Internal Revenue Service and Department of Labor requirements. In the same

[44] Note that, as described below, in a revenue sharing arrangement, plan participants are not directly paying administrative fees to the plan administrator. Rather, plan participants pay investment management fees based on their asset allocation, and the respective investment management providers pay the plan's administrator pursuant to a separate revenue sharing agreement each has with the plan's administrator.

manner as item (b) above, participants typically pay these costs.

e. *Consulting/Audit/Investment Advisory Costs*. These costs are generally specific to services provided by firms that are not associated with the administrative service provider and include, but are not limited to, legal services, plan audits, investment monitoring reports, and consulting associated with plan mergers, divestitures, and required plan corrections. With respect to audit fees, administrative service providers are generally responsible for preparing reports used by external auditors to document plan activity. These costs may be paid through plan assets or revenue sharing.[45]

f. *Participant-Directed Transactions*. Plan participants who request loans and in-service withdrawals typically incur the costs associated with processing these transactions. Also included in this category are Qualified Domestic Relations Order services and required minimum distribution payments. In certain instances, participants may also incur fees associated with the processing of payments resulting from termination of employment or retirement.

C. Arrangements to Pay for Plan Costs

30. Different arrangements are used in the retirement plan services industry to compensate firms that provide services to defined contribution plans. I describe three common arrangements below.

[45] It is standard practice not to include consulting, audit, and investment advisory costs in an analysis of total plan costs unless these costs are structured in the form of an additional asset-based or fixed per participant fee. Therefore, I do not include these costs in my analysis of the total plan costs of the Safeway Plan. *See* **Section VII**.

1. Bundled, no contracted administrative fee arrangement

31. Under this approach, investment management and administrative services are offered by a single provider. The concept of fully "bundling services" results from "wrapping" administrative and investment management services into a single package of services performed by one firm. Services may also be partially bundled, with more than one firm providing services and at least one firm providing multiple services. These types of arrangements were common within the industry during the 1990s and early to mid-2000s periods, and remain so to this day. The Callan 2017 Defined Contribution Trends report, for example, indicates that fully and partially bundled arrangements represented about 65.1% of all the plans in 2010.[46] The percentage of fully and partially bundled plans represented 53.8% of plans in 2016.[47] Such "bundled" arrangements are contrasted with "unbundled" arrangements where the plan obtains administrative and investment management services from separate providers.

32. In a typical bundled service arrangement, there are no contractual charges for administrative services, and the total cost of investment management and administrative services are paid ("bundled" together) through the expense ratios charged by the mutual funds or other investment vehicles offered in the plan. Thus, the expense ratios charged by the plan's investment options serve as an "all in" fee for all investment management and administrative services. Under this arrangement, the administrative costs borne by participants vary depending on the participant's account balance and asset allocation.

2. Fixed, asset-based administrative fees

33. Under this type of fee arrangement, investment management fees are collected through

[46] Callan, "2017 Defined Contribution Trends," at p. 6.

[47] Callan, "2017 Defined Contribution Trends," at p. 6.

the expense ratios of funds included in the plan, and the administrative service provider receives a contracted percentage of plan assets. The percentage may be paid from revenue sharing derived from expense ratios charged by the plan's mutual funds or other investment vehicles, a direct fee charged to plan participants or the plan sponsor, or a combination of these sources.

34. With respect to this type of arrangement, if paid by the participant, average administrative revenues per participant are higher for participants with larger account balances and lower for participants with smaller balances. Any collected revenues that exceed the contracted percentage may be used to pay other plan expenses or (in more recent years) allocated to participants as additional income.

3. Fixed, per participant administrative fees

35. Administrative fees under this type of arrangement are established as a contractual amount, and the administrative service provider generally receives a fixed dollar amount per participant with a balance in the plan. In the same manner as asset-based administrative fees, amounts may be paid from revenue sharing from the expense ratios of funds in the plan, a direct fee charged to plan participants or the plan sponsor, or a combination of these sources. In the same manner as asset-based administrative fee arrangements, revenue sharing payments are collected through the expense ratios of funds included in the plan, and any excess revenues may be used to pay other plan expenses or (in more recent years) allocated to participants as additional income.

36. During the Review Period, JPMRPS and Great-West RPS received fixed, per participant fees for their administrative services provided to the Safeway Plan, which steadily declined from

$67 in 2009 to $65 in 2011, then to $52 in 2015.[48] JPMRPS and Great-West RPS received their fixed, per participant fees through a combination of revenue sharing from the expense ratios of funds in the plan and direct fees associated with Plan participants. As I discuss in further detail in **Section VI.B**, regardless of the amount of revenue sharing collected by JPMRPS and Great-West RPS to pay for the fixed, per participant fees, JPMRPS/Great-West RPS received no less and no more than the contractual fixed, per participant fee delineated in the MSA and subsequent amendments for the administrative services they provided to the Safeway Plan.

37. Fixed, per participant fees may also be debited in equal amounts from each participant's account. Under such a fixed, per participant fee arrangement, administrative costs (expressed as a percentage of assets) are lower for participants with large account balances and higher for participants with smaller account balances. For this reason, relative to an asset-based fee arrangement, fixed, per participant fees in the form of direct debits in equal amounts from participants' accounts benefit longer-term (and typically higher paid) participants with larger account balances and disadvantage newer (and generally lower paid) participants with smaller account balances. Participants with smaller account balances often include employees who just started to participate in the plan and retired participants who are slowly reducing their account balances during retirement by receiving installment payments.[49]

[48] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 694); Amendment to Master Services Agreement, effective July 18, 2011 (SWY_TR00000664 - SWY_TR00000668, at 664); Email from B. Tankovich to M. Boylan, "FW: MSA Amendment," April 27, 2015 (SWY_TR00006427 - SWY_TR00006435, at 427).

[49] Plaintiff Lorenz appears to not understand the fixed, per participant fee arrangement for administrative services provided to the Safeway Plan. Specifically, Plaintiff states: "a reasonable investigation would have found that a per-participant fee for record keeping [*sic*] services as opposed to an asset-based revenue sharing arrangement would have resulted in lower fees." (Lorenz Complaint, ¶ 43.)

D. Industry Changes and Trends

38. The retirement plan industry has experienced many changes over the last decade that have affected the manner in which retirement plan service providers administer plans, how plan sponsors address the needs and requirements of plan participants, and how service providers and plan sponsors collaborate to structure fee and service arrangements. Having consulted with a wide range of plan sponsors and interacted with multiple service providers during this same period, I can attest to the substantial nature of these changes and their impact on plan sponsors, participants, and retirement plan service providers.

39. Below, I describe the notable industry trends that affected defined contribution plan administrative fees during the Review Period (*i.e.*, from 2010 to 2016). I generally group these industry trends into three time periods: 2010-2011, 2012-2014, and 2015-2016. Prior to 2012, there were no participant or plan sponsor fee disclosure requirements.[50] From 2012 to 2014, plan sponsors and service providers dealt with new disclosure requirements, and established new policies and procedures for the administration of excess revenue amounts.[51] Since 2014, there has been an increase in consolidation in the market for defined contribution plan recordkeepers and an increase in fixed annual fee arrangements, which accounts for, in part, a new period of industry trends beginning in 2015.[52]

[50] Prior to 2012, Plan Sponsors were subject to Department of Labor 404(c) requirements which required Plan Sponsors to provide sufficient investment information to participants, including a description of any transaction fees or expenses that are charged to participant accounts. (*See, e.g.,* Scheidt, K. S., "ERISA §404(c) Compliance Considerations," *Bureau of National Affairs*, 2008.)

[51] "The '408(b)(2) Disclosure Regulation' and the '404a-5 Disclosure Regulation,' the two key components of the DOL effort to provide upfront and increased transparency in the marketplace, went into effect in 2012. Although these rules are relatively new, both service providers and disclosure recipients now have the opportunity to make plan-related decisions with more complete information about fees." (Wagner, M. S., "ERISA Fee Disclosures: Best Practices for Fiduciaries," *Journal of Pension Benefits*, at p. 16.)

[52] As noted in the 2015 NEPC survey, "[t]his year, an increasing number of mid-sized plans indicated their use of a fixed-dollar per head arrangement for recordkeeping fees; 43% of these fixed-dollar per head arrangements were

1. Revenue sharing

40. During the Review Period, revenue sharing was the primary mechanism through which administrative fees were paid.[53] The 2012 Callan Survey noted that 66.6% of participant fees were in the form of revenue sharing payments in 2011, with 43.1% of plans indicating that all fees were paid through revenue sharing and 23.5% of plans indicating that fees were partially paid through revenue sharing.[54] From 2012 through 2014, the percentage of fees paid through revenue was 66.6%, 60.3%, and 61.9%, respectively, according to the Callan 2016 Survey.[55] By 2015, the percentage of participant fees in the form of revenue sharing decreased to 51.8%, with 29.4% of fees paid solely through revenue sharing and 22.4% paid partially through revenue sharing, and by 2016, the percentage of participant fees in the form of revenue sharing further decreased to 38.2%, with 29.2% of all fees paid through revenue sharing and 9.0% paid partially through revenue sharing.[56] While revenue sharing declined over the course of the Review

contracted in the last three years. (This differs from a year earlier, when Survey results indicated that mid-sized plans were more likely to pursue a bundled approach, while larger plans typically opted for a fixed-dollar-per head approach.)" The survey concludes that, "[t]he marketplace has already witnessed consolidation of recordkeepers, a sign that fees cannot decline indefinitely." (NEPC, "NEPC 2015 Defined Contribution Plan & Fee Survey: What a Difference a Decade Makes," October 2015, at pp. 3, 5.)

Additionally, a Workforce Special Report covering the 2015 NEPC survey describes the increase in consolidation in the market for defined contribution plan recordkeepers: "[l]ast year's big deals included John Hancock Financial purchasing New York Life Retirement Plan Services; Transamerica Retirement Solutions acquired Mercer's defined contribution record-keeping business; and OneAmerica Financial Partners bought BMO Financial Group's U.S. record-keeping services business. Earlier this year, Xerox Corp. said it would spin off its record-keeping business into a separate public company." (Kujawa, P., "Special Report: Fewer Record-Keepers in the 401(k) Field," *Workforce*, July 18, 2016.)

[53] The primary mechanisms through which participants paid administrative fees were (i) revenue sharing, included as a portion of the expense ratio; (ii) a combination of revenue sharing and fixed per-participant fees; (iii) solely through fixed, per-participant fees; and (iv) through asset-based fees, separate from the expense ratio. (Callan, "2012 Defined Contribution Trends Survey," at p. 39; Callan, "2013 Defined Contribution Trends," at p. 46; Callan, "2016 Defined Contribution Trends," at p. 46; and Callan, "2017 Defined Contribution Trends," p. 46.)

[54] Callan, "2012 Defined Contribution Trends Survey," at p. 39.

[55] Callan, "2016 Defined Contribution Trends," at p. 46.

[56] Callan, "2016 Defined Contribution Trends," at p. 46; Callan, "2017 Defined Contribution Trends," at p. 46.

Period, the percentage of retirement plan sponsors adopting fixed fee arrangements increased in 2015 as referenced above.[57]

41. Consistent with industry practices, administrative services for the Safeway Plan were funded through revenue sharing and direct payments. The Safeway Plan's revenue sharing (as a percentage of Plan assets) decreased over the Review Period, from 0.17% in 2010 to 0.12% by June 2016.[58] As I explain in **Section VI.B**, although JPMRPS and Great-West RPS collected revenue sharing amounts to pay for the administrative services provided to the Plan, the fixed, per participant fee arrangement precluded JPMRPS/Great-West RPS from receiving any more than was agreed upon in the MSA and subsequent amendments.

2. Reimbursement accounts

42. A plan sponsor may request that the administrative service provider establish a reimbursement account to hold excess revenue sharing amounts "to pay for legitimate plan expenses outside of basic plan administration."[59]

43. Prior to 2010, the use of plan reimbursement accounts and the practice of providing rebates to participants from those accounts was limited, in part, due to plan administrators'

[57] The transition to broader use of fixed fee arrangements is supported by data contained in the NEPC survey, which noted that 47% of plan sponsors adopted a fixed dollar fee methodology in 2015 compared to 29% in 2014. The percentage of plan sponsors using a fixed fee approach increased to 51% in 2016. (NEPC, "NEPC 2014 Defined Contribution Plan & Fee Survey: What Plan Sponsors are Doing Now," October 2014, at p. 2; NEPC, "NEPC Defined Contribution Plan & Fee Survey: What a Difference a Decade Makes," October 2015, at p. 3; NEPC, "Defined Contribution Fee Survey Infographic," September 22, 2016.)

Data from the Callan Surveys further supports the increased adoption of fixed fee arrangements specific to defined contribution plans. According to the 2012 Survey, 13.7% of plans adopted a sole fixed dollar per participant fee arrangement in 2011, increasing to 22.4% in 2015 based on 2016 Survey results, and 41.6% in 2016 based on 2017 Survey results. (Callan, "2012 Defined Contribution Trends Survey," at p. 39; Callan, "2016 Defined Contribution Trends," at p. 46; and Callan, "2017 Defined Contribution Trends," p. 46.)

[58] *See* **Exhibit 4**.

[59] Callan, "2012 Defined Contribution Trends Survey," at p. 41.

interpretation of "preferential treatment of dividend rules." These rules precluded publicly-traded mutual funds from providing a "preferential dividend" to some fund shareholders and not others.[60]

44. The repeal of the preferential treatment of dividends rules, effective after December 2010, coupled with modifications to administrative fee arrangements, were factors that contributed to the increased use of plan expense or ERISA reimbursement accounts during the Review Period.[61] Deloitte survey data indicate that in 2010, 20% of plans had reimbursement accounts that resulted in fee credits.[62] However, only 29% of plans with such accounts (or approximately 5.8% of respondent plans) rebated excess revenue to Plan participants.[63]

45. In 2013 and 2014, Deloitte reported an increase in plans with reimbursement accounts to 32%.[64] However, only 17% of plans with reimbursement accounts (or approximately 5.4% of respondent plans) allocated rebates to participants.[65] By 2015, Deloitte reported that 39% of

[60] Mutual funds are required to satisfy certain requirements under Subchapter M of the Internal Revenue Code to qualify as "pass-through" entities and thereby avoid a double, corporate-level tax. To the extent that a mutual fund company pays a "preferential dividend" (an amount paid to some shareholders and not others) within the meaning of Section 562(c), it will forfeit its eligibility for a dividends-paid deduction and subject shareholders to double taxation. (*See* 26 U.S. Code Subchapter M; 26 U.S. Code § 562(c); H.R.4337 – Regulated Investment Company Modernization Act of 2010, at 124 STAT. 3550.)

In my experience, prior to 2011, many plan administrators had concerns that these prohibitions on preferential dividends extended to revenue sharing rebates to defined contribution plan participants, since these rebates effectively function as preferential dividends to plan participants. As noted by Vanguard, "DOL's relative lack of guidance, when compared with other emerging fiduciary topics, comes as a surprise and should be factored in when considering an ERISA budget account." (Vanguard, "Shining a Light on ERISA Budget Accounts," August 2014, at p. 3.)

[61] The Regulated Investment Company Modernization Act of 2010 repealed the preferential dividend rule for publicly traded funds, effective after December 22, 2010. (H.R.4337 – Regulated Investment Company Modernization Act of 2010, at 124 STAT. 3550.)

[62] Deloitte, "Annual 401(k) Survey Retirement Readiness," 2010, at p. 54.

[63] Deloitte, "Annual 401(k) Survey Retirement Readiness," 2010, at p. 54.

[64] Deloitte/International Foundation of Employee Benefit Plans, "Annual Defined Contribution Benchmarking Survey: Ease of Use Drives Engagement in Saving for Retirement," 2015, at p. 46.

[65] Deloitte/International Foundation of Employee Benefit Plans, "Annual Defined Contribution Benchmarking

plans had a reimbursement account, of which 26% (or approximately 10.1% of respondent plans) allocated rebates to participants.[66]

46. Consistent with these industry changes and trends, the Safeway Plan established a PEA account effective January 1, 2009,[67] and later established an ("ESA") effective November 1, 2013.[68]

3. Administrative fees

47. Administrative fees generally include fees related to recordkeeping and trustee services.[69] NEPC survey data indicate that the estimated median administrative fee was $103 per participant in 2010 and 2011.[70] Plan sponsors surveyed to assemble the NEPC data are sponsors of plans that are generally comparable to the Safeway Plan.[71]

48. From 2012 through 2014, NEPC reported a decrease in per participant fees from $103 per participant in 2011, $92 in 2012, $80 in 2013, and $70 in 2014.[72] A Hewitt survey reported

Survey: Ease of Use Drives Engagement in Saving for Retirement," 2015, at p. 46.

[66] Deloitte/International Foundation of Employee Benefit Plans, "Annual Defined Contribution Benchmarking Survey: Ease of Use Drives Engagement in Saving for Retirement," 2015, at p. 46.

[67] Addendum to Qualified Defined Contribution Plan Services Schedule to the Master Services Agreement for Qualified Plans - Plan Expense Arrangement (SWY_TR00000710 - SWY_TR00000715, at 710).

[68] Amendment to Master Services Agreement and Addendum to Master Services Agreement for Qualified Plans - ERISA Spending Account, November 1, 2013 (SWY_TR00000659 - SWY_TR00000663, at 659, 661).

[69] For instance, NEPC reports administrative fees as recordkeeping, trust, and custody fees, Hewitt reports administrative cost, or the sum of recordkeeping fees and trustee fees, per participant. (NEPC, "NEPC 2014 Defined Contribution Plan & Fee Survey: What Plan Sponsors Are Doing Now," October 2014, at p. 3; Hewitt EnnisKnupp, "Total Plan Cost Benchmarking," Presentation to Nevada System of Higher Education, November 14, 2014, at p. 40.)

[70] NEPC reports administrative fees as recordkeeping, trust and custody fees. (NEPC, "NEPC 2014 Defined Contribution Plan & Fee Survey: What Plan Sponsors Are Doing Now," October 2014, at p. 3.)

[71] In the 2014 NEPC survey of 113 plans, for example, the average plan had $1.1 billion in assets and 12,091 participants. The median plan had $495 million in assets and 6,545 participants. (Cress, K., "State Universities Retirement System of Illinois: NEPC DC Plan and Fee Survey & Self-Managed Plan Update," September 18, 2014, at p. 2.)

[72] NEPC, "NEPC 2015 Defined Contribution Plan & Fee Survey: What a Difference a Decade Makes," October

average per participant fees of $84 in 2012 for all plans surveyed, and $76 for plans with assets between $0.81 billion and $2.19 billion.[73]

49. The trend to lower per participant administrative fees continued after 2014. According to the NEPC survey, median per participant administrative fees decreased from $70 per participant in 2014 to $64 in 2015, and to $57 in 2016.[74]

4. Total plan costs

50. Total plan costs, or "all-in" fees, typically incorporate investment management fees and administrative fees associated with a plan.[75] NEPC survey data[76] indicate that median total plan costs was roughly constant at 0.59% in 2010 and 0.58% in 2011.[77] In 2011, Deloitte reported median "all-in" fees ranging from 0.38% to 0.46% for plans comparable to the Safeway Plan in terms of plan size and participant count.[78]

2015, at p. 3; NEPC, "Defined Contribution Fee Survey Infographic," September 22, 2016.

[73] Hewitt reports administrative cost, or the sum of recordkeeping fees and trustee fees, per participant. (Hewitt EnnisKnupp, "Total Plan Cost Benchmarking," Presentation to Nevada System of Higher Education, November 14, 2014, at p. 40.)

[74] NEPC, "NEPC 2015 Defined Contribution Plan & Fee Survey: What a Difference a Decade Makes," October 2015, at p. 3; NEPC, "Defined Contribution Fee Survey Infographic," September 22, 2016.

[75] Total plan costs may include a variety of fees, such as administration, recordkeeping, communication, education, auditing, and consulting. However, as discussed above, investment management services account for the majority of total plan costs. According to Deloitte/ICI's 2011 study, asset-based investment fees make up, on average, 84% of total "all-in" fees, while recordkeeping/administrative fees make up, on average, 16%. (Deloitte/ICI, "Inside the Structure of Defined Contribution/401(k) Plan Fees: A Study Assessing the Mechanics of the 'All-In' Fee," November 2011, at p. 20.)

[76] As previously noted, plan sponsors surveyed to assemble the NEPC data are sponsors of plans that are generally comparable to the Safeway Plan. (Cress, K., "State Universities Retirement System of Illinois: NEPC DC Plan and Fee Survey & Self-Managed Plan Update," September 18, 2014, at p. 2.)

[77] NEPC's "all-in costs" include "fees related to investment management, recordkeeping, and trust and custody services." (NEPC, "NEPC 2014 Defined Contribution Plan & Fee Survey: What Plan Sponsors Are Doing Now," October 2014, at pp. 2-3.)

[78] In 2011, Deloitte reported a median "all-in" fee of 0.38% for plans with assets exceeding $1 billion (with a 10th to 90th percentile range of 0.13% to 0.56%), 0.43% for plans with more than 10,000 participants (with a 10th to 90th percentile range of 0.21% to 1.03%), and 0.46% for plans with more than 10,000 participants and average account balances between $25,000 and $100,000 (Deloitte/ICI, "Inside the Structure of Defined Contribution/401(k) Plan

51. NEPC survey data show that median total plan costs decreased from 0.58% in 2011 to 0.55% in 2012, and to 0.52% in 2014.[79] For plans with assets exceeding $1 billion, BrightScope data show that the median estimated total plan costs decreased from 0.30% in 2012 to 0.27% in 2014.[80] This gradual decrease was also evident in the 2013 Deloitte survey which reported median "all-in" fees for plans comparable to the Safeway Plans ranging from 0.37% to 0.39%, down from 0.38% to 0.46% in 2011.[81] Additionally, a 2012 Hewitt survey reported average total plan cost of 0.49% for all plans surveyed and 0.42% for plans comparable with assets between $0.81 billion and $2.19 billion.[82]

52. According to the NEPC survey, median total plan costs further declined from 0.52% in 2014 to 0.46% in 2015, and to 0.43% in 2016.[83]

Fees: A Study Assessing the Mechanics of the 'All-In' Fee," November 2011, at pp. 24-26.)

[79] NEPC, "NEPC 2015 Defined Contribution Plan & Fee Survey: What a Difference a Decade Makes," October 2015, at p. 2.

[80] This is consistent when examining the 10th and 90th percentile range, which decreased slightly from 0.16% to 0.52% in 2012 to 0.14% to 0.51% in 2014. (BrightScope/ICI, "The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans," December 2014, at pp. 41-42; BrightScope/ICI, "The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2014," December 2016, at pp. 49-50.)

[81] The Deloitte Survey reported a median "all-in" fee of 0.37% for plans with assets exceeding $500 million (with a range of 0.24% to 0.67%), 0.39% for plans with more than 10,000 participants (with a range of 0.24% to 0.87%), and 0.39% for plans with more than 10,000 participants and average account balances between $25,000 and $100,000. (Deloitte/ICI, "Inside the Structure of Defined Contribution/401(k) Plan Fees, 2013: A Study Assessing the Mechanics of the 'All-In' Fee," August 2014, at pp. 20-22; Deloitte/ICI, "Inside the Structure of Defined Contribution/401(k) Plan Fees: A Study Assessing the Mechanics of the 'All-In' Fee," November 2011, at pp. 24-26.)

[82] Hewitt reports total plan cost, or the sum of investment management fees and administrative costs. (Hewitt EnnisKnupp, "Total Plan Cost Benchmarking," Presentation to Nevada System of Higher Education, November 14, 2014, at p. 38.)

[83] NEPC, "NEPC 2015 Defined Contribution Plan & Fee Survey: What a Difference a Decade Makes," October 2015, at pp. 2-3; Employee Benefit Advisor, "Retirement Plan Fees Level Out," August 23, 2017.

VI. JPMRPS AND GREAT-WEST RPS PROVIDED AN ENHANCED LEVEL OF ADMINISTRATIVE SERVICES TO THE SAFEWAY PLAN, AND RECEIVED FIXED, PER PARTICIPANT FEES IN EXCHANGE

A. JPMRPS and Great-West RPS Provided an Enhanced Level of Administrative Services to the Safeway Plan

53. In order to evaluate the reasonableness of fees paid to administrative service providers, one must consider, among other things, the range of services provided in exchange for such fees. The scope of administrative services (and accompanying fees) can vary across service providers and defined contribution plans depending on a number of factors including, but not limited to, plan complexity, participant demographics, and participant and plan sponsor servicing requirements. Indeed, JPMRPS had a service arrangement with Safeway and the Plan Committee to provide "recordkeeping and administrative services, as well as certain investment options [] in one package."[84] Based on my experience reviewing and advising on administrative services provided to defined contribution plans, the breadth of services provided by JPMRPS and Great-West RPS to the Safeway Plan exceeded those typically provided by administrative service providers. Below, I provide a description of the standard administrative services and non-standard administrative services (*i.e.*, services that were not typically provided by administrative service providers) provided by JPMRPS and Great-West RPS, services related to Plan participant and Plan sponsor communications, and the integration of these services with those provided by Buck Consultants.[85]

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[84] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 694).

[85] Safeway, as Plan Administrator, contracted with Buck Consultants to "host a website [] to allow Participants to access benefit information related to the Plan" and "directed Buck to enable the [] Benefits Portal to allow Participants to access the [JPMRPS] hosted website." In turn, JPMRPS was "directed by the Plan Administrator to receive and accept Participants who have been passed to J.P. Morgan's Website by Buck upon Buck's authorization of such Participants." (Amendment to Master Services Agreement, effective October 22, 2010 (SWY_TR00000655 - SWY_TR00000658, at 655-656).)

54. The MSA, as well as its subsequent amendments,[86] memorialized the administrative services that JPMRPS would provide to the Safeway Plan.[87] The services provided by JPMRPS included standard administrative services, such as maintenance of participant account balances, processing of transactions, tax withholding and reporting, compliance services, fulfillment of enrollment materials, and employee education meetings.[88] For example, JPMRPS was responsible for compliance testing, including 401(k) and 401(m) testing, 415(c) annual addition limitation testing, 402(g) elective deferral limitation testing, and, if required, the calculation of Qualified Non-Elective Contributions (QNEC).[89] In addition, JPMRPS provided services with regard to the determination and processing of minimum required distributions and payments to terminated and retired participants, which, in contrast to practices adopted by other service providers during this period, were provided without processing fees.[90]

55. In addition to the standard administrative services discussed above, JPMRPS provided non-standard administrative services (*i.e.*, services that were not typically provided by administrative service providers). For example, JPMRPS calculated, processed, and reported

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[86] The MSA was amended effective October 22, 2010; July 18, 2011; November 1, 2013; July 1, 2014; April 1, 2015; and October 8, 2015. *See* Amendment to Master Services Agreement, effective October 22, 2010 (SWY_TR00000655 - SWY_TR00000658); Amendment to Master Services Agreement, effective July 18, 2011 (SWY_TR00000664 - SWY_TR00000668); Amendment to Master Services Agreement and Addendum to Master Services Agreement for Qualified Plans - ERISA Spending Account, effective November 1, 2013 (SWY_TR00000659 - SWY_TR00000663); Amendment to Master Services Agreement, effective July 1, 2014 (SWY_TR00000645 - SWY_TR00000646); Email from B. Tankovich to M. Boylan, "FW: MSA Amendment," April 27, 2015 (SWY_TR00006427 - SWY_TR00006435, at 427); and Amendment to Master Services Agreement, effective October 8, 2015 (SWY_TR00000643 - SWY_TR00000644).

[87] *See, e.g.*, Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 694-703).

[88] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 691).

[89] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 695-697).

[90] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 696, 698-699).

Safeway stock dividends that were "passed through" to Plan participants. JPMRPS also provided services related to the distribution of proxy information specific to Safeway Stock, including the preparation of files containing shareholder information.[91]

56. Consistent with the responsibilities of a full-service provider, JPMRPS also performed participant and plan sponsor communication services on behalf of Safeway and Plan participants. Specifically, JPMRPS mailed Summary Plan Descriptions to Plan participants and also prepared and distributed quarterly participant statements. In addition, JPMRPS prepared and distributed customized enrollment materials, including posters, post cards, and e-mails.[92] The provision of customized enrollment materials, coupled with JPMRPS agreeing not to impose additional fees for the preparation and mailing of these materials, is indicative of an enhanced level of service.

57. Furthermore, in 2010, the Safeway Plan contracted with Buck Consultants to host a website for Plan Participants that would interface with JPMRPS, enabling participants to access benefit information provided by both providers.[93] Plan participants could access the JPMRPS website via the "AisleOne Benefits Portal," which was administered by Buck Consultants and provided benefit information to Plan participants.[94] In addition, JPMRPS also began to accept a weekly file from Buck Consultants containing enrollment and investment elections of Plan participants "who have enrolled into the Plans as part of the Quick Enroll administrative services

[91] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 698).

[92] Such customized materials include posters, post cards, and email messaging. (Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 699-700).)

[93] Amendment to Master Services Agreement, effective October 22, 2010 (SWY_TR00000655 - SWY_TR00000658, at 655-656).

[94] Amendment to Master Services Agreement, effective October 22, 2010 (SWY_TR00000655 - SWY_TR00000658, at 655).

being performed by Buck for Safeway."[95] This integration with Buck Consultants was further indicative of an enhanced level of Plan participant and Plan sponsor services.

B. JPMRPS and Great-West RPS Received the Agreed Upon Fixed, Per Participant Fees for Its Administrative Services Provided to the Safeway Plan

58. During the Review Period, the fixed, per participant fees received by JPMRPS and Great-West RPS for their administrative services provided to the Safeway Plan decreased from $67 to $52 per participant annually. Specifically, the fee arrangement between JPMRPS, Safeway, and the Plan Committee in the MSA, effective January 1, 2009, stated that the "Contingent Per Participant Fee" paid to JPMRPS for its administrative services would be fixed at $16.75 per participant per quarter, or $67 per participant annually.[96] In the Amendment to the MSA, effective July 18, 2011, the fixed, per participant fee to JPMRPS was reduced to $16.25 per participant per quarter, or $65 per participant annually.[97] Finally, in the Amendment to MSA, effective April 1, 2015 (and following Great-West Financial's acquisition of JPMRPS), the fixed, per participant fee to Great-West RPS was even further reduced to $13 per participant per quarter, or $52 per participant annually.[98]

59. Consistent with the discussion in **Section V.C**, fixed, per participant fees to JPMRPS were paid from a combination of revenue sharing from the expense ratios of investment options

[95] Amendment to Master Services Agreement, effective October 22, 2010 (SWY_TR00000655 - SWY_TR00000658, at 656).

[96] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 694).

[97] Amendment to Master Services Agreement, effective July 18, 2011 (SWY_TR00000664 - SWY_TR00000668, at 664).

[98] Email from B. Tankovich to M. Boylan, "FW: MSA Amendment," April 27, 2015 (SWY_TR00006427 - SWY_TR00006435, at 427).

in the Safeway Plan[99] and a direct fee charged to Plan participants. Prior to November 1, 2013, if the amount collected by JPMRPS via revenue sharing was greater than the total fixed, per participant fee (*i.e.*, the Contingent Per Participant Fee multiplied by the number of Plan participants), the excess was accumulated under the PEA in a "hypothetical, non-interest bearing accrual… which Plan Sponsor and/or Plan Administrator may use to pay certain Plan expenses."[100] Following November 1, 2013, any excess revenue sharing amount collected by JPMRPS/Great-West RPS was placed in an ERISA Spending Account ("ESA").[101] On the other hand, if the amount collected by JPMRPS/Great-West RPS via revenue sharing was less than the total fixed, per participant fee, the shortfall could be paid by Plan participants on a pro-rata (based on account balance) or per participant basis,[102] by the Plan sponsor (*i.e.*, Safeway), or

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[99] The MSA also refers to the revenue sharing amount as "credit toward recordkeeping services." (Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 694, 702-703).) As stated in the Plan's 408(b)(2) disclosure, the "'Credit Toward Administrative Services' represents indirect compensation to J.P. Morgan estimated to be received from proprietary and non-proprietary investment providers." (*See, e.g.,* Safeway 401(k) Plan 408(b)(2) Disclosure of Services and Fees, July 2012 (SWY_TR00000018 - SWY_TR00000025, at 19).)

[100] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 694, 710). "Accruals will be calculated and attributed to the PEA at the end of each calendar quarter for all service fees received by JPMorgan RPS related to proprietary and non-proprietary investments in the Plan in excess of the applicable Contingent Per Participant Fee as outlined in Section B of the Service Elections and Fees Exhibit included in the Master Services Agreement." (Addendum to Qualified Defined Contribution Plan Services Schedule to the Master Services Agreement for Qualified Plans - Plan Expense Arrangement (SWY_TR00000710 - SWY_TR00000715, at 714).)

Although the MSA noted that balances in the PEA account "expired after 12 months," in practice, I understand that balances in the PEA account did not expire during the Review Period. (Memorandum re. "Amendment to the 401k Master Services Agreement - Approval Needed," September 11, 2014 (SWY_TR00037444).) "So the money [in the PEA] -- after 12 months, we -- from collection, we needed to spend that money based on plan expenses. The language in the contract was that it would expire; however, while I was there, we never -- no money ever expired out of that fund account." (Deposition of Lisa Lynn Montalvo, April 13, 2018, 89:2-8.)

[101] Amendment to Master Services Agreement and Addendum to Master Services Agreement for Qualified Plans - ERISA Spending Account, effective November 1, 2013 (SWY_TR00000659 - SWY_TR00000663, at 661). A later amendment to the MSA, effective July 2014, enabled the transfer of assets from the PEA account to the ESA. (Memorandum re. "Amendment to the 401k Master Services Agreement - Approval Needed," September 11, 2014 (SWY_TR00037444); Amendment to Master Services Agreement, effective July 1, 2014 (SWY_TR00000645 - SWY_TR00000646).)

[102] JPMRPS collected certain direct fees from Plan participants. Plan participants with an account balance were assessed a fee of $1.00 per month (or $3.00 per quarter), and Plan participants with a loan balance were charged an

from the aforementioned PEA account or the ESA, depending on the time period.[103]

60. In summary, regardless of the amount of revenue sharing collected by JPMRPS or Great-West RPS, the administrative service providers received the contractual fixed, per participant fee delineated in the MSA and subsequent amendments for the administrative services they provided to the Safeway Plan. Indeed, based on Plaintiff Lorenz's premise that "record-keeping [*sic*] services could have been provided at a lower cost if they were calculated on a per-participant basis as opposed to on an asset-based basis," JPMRPS' fixed, per participant fee arrangement suggests that its administrative services were already being provided "at a lower cost."[104]

VII. BENCHMARKING COMPARISONS DEMONSTRATE THAT THE SAFEWAY PLAN'S COSTS WERE REASONABLE

A. Benchmarking Comparisons Must Consider the Many Variables that Influence Plan Costs

61. Investment management and administrative costs specific to defined contribution retirement plans are variable in nature and are impacted by a number of factors. These factors include, but are not limited to: the design of the plan and its unique features, the number of participants and the average account balance, the set of available investment options and the asset allocation decisions made by participants, the presence (or absence) of index fund alternatives, plan sponsor communications and investment education requirements, and

additional fee of $3.50 per month. These direct fees paid by Plan participants were not fees paid to JPMRPS for administrative services. Instead, these direct fees were Plan assets that could "be used at Plan Sponsor's and/or Plan Administrator's direction to pay [JPMRPS] fees or other reasonable Plan expenses or be reallocated to Participant Accounts as directed by Plan Sponsor or Plan Administrator." (Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 700).)

[103] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 694).

[104] Lorenz Complaint, ¶ 52.

administrative complexity.[105] Because so many variables can influence plan costs, each defined contribution plan is unique in nature. Two plans with identical fund lineups can have materially different total cost percentages depending on participant asset allocation decisions, administrative servicing requirements, and the administrative fees charged for these services. Thus, it is important to consider the impact of the following variables (to the extent possible/permitted by the available data) when assessing the reasonableness of retirement plan costs and interpreting the results of a benchmarking comparison analysis.[106]

1. Total plan cost benchmarking exercises should consider investment decisions made by plan participants

62. Total plan cost benchmarking exercises should consider investment decisions made by plan participants. For example, assume that Company A and Company B have the exact same investment fund lineup with a combination of actively and passively managed investment options and that both companies utilize a bundled services arrangement. Assume that participants in Company A are younger and decide to allocate a greater percentage of assets to

[105] As noted in the Deloitte/ICI reports prepared for the years 2011 and 2014, there are numerous factors that impact retirement plan costs. For example, the 2014 report lists 19 variables that impact the amount of the plans "all-in" fee. (Deloitte/ICI, "Inside the Structure of Defined Contribution/401(k) Plan Fees, 2013: A Study Assessing the Mechanics of the 'All-In' Fee," August 2014, at pp. 7, 20; Deloitte/ICI, "Inside the Structure of Defined Contribution/401(k) Plan Fees: A Study Assessing the Mechanics of the 'All-In' Fee," November 2011, at pp. 7, 20.

In Hewitt's 2012 analysis of the Safeway Plan's total costs, Hewitt's presentation also states, "every plan has differences in plan characteristics and administrative complexity, plan sponsors should not have an explicit goal of being 'below median', but rather should ensure that fees seem in line with a comparable universe for the level of service provided." Hewitt further lists the following "different characteristics that affect Total Plan Cost" as "[a]ctive versus passive investment management; [a]vailability of company stock as an investment option; [v]ariances in asset allocation; [v]ariances in average participant balances; and [v]ariances in level of service provided." (Hewitt Ennisknupp, "401(k) Total Plan Cost Analysis," January 2012 (AON0039831 - AON0039842, at 842).)

[106] In addition, the process of benchmarking plans is performed on a specific date based on asset balances and the numbers of participants with balances as of that date. Changes in investment performance occur daily, as do changes in the numbers of participants with balances. As a result, plan cost percentages also vary each day and may change to a significant extent throughout a plan year.

equity or stock funds, while the older Company B participants allocate a greater percentage of assets to fixed income or bond funds. Because equity funds generally have higher expense ratios than bond funds, Company A will have a higher total cost percentage than Company B.[107] In this example, the higher cost percentage specific to Company A's plan is unrelated to decisions made by the plan sponsor or fiduciaries regarding fund choices offered to plan participants.

2. Benchmarking analyses of administrative fees per participant should consider each plan's unique servicing requirements, which vary by plan

63. Servicing requirements vary by plan, and higher administrative fees may simply reflect additional servicing requirements. When interpreting the results from a benchmarking exercise for administrative services, it is also important to consider participant account balances and the complexities (and resulting costs) of providing administrative, compliance, communications, and investment education services to a plan. These servicing requirements are variable in nature, may differ substantially by company, and can change each year based on modifications to plan provisions and features, as well as actions taken by the company (*e.g.*, mergers and divestitures).

64. Continuing to use Companies A and B as examples, assume that Company A has an average annual administrative fee of $75 per participant, while Company B has an average annual administrative fee of $60 per participant. This information alone is insufficient to compare the two companies' fee arrangements. For example, Company A may have a much more complex plan (*e.g.*, participants in multiple geographic locations with separate payrolls,

[107] According to the 2011 Deloitte/Investment Company Institute study, a 10% higher allocation to equity investments results in an approximate 0.026% increase (2.6 bps) in retirement plan costs. As of December 31, 2011, the Safeway Plan had 39.5% of total plan assets allocated to domestic and international equities (Safeway Stock Fund not counted as equity), compared to 47% for the companies included in the survey. (**Exhibit 2**; Deloitte/ICI, "Inside the Structure of Defined Contribution/401(k) Plan Fees: A Study Assessing the Mechanics of the 'All-In' Fee," November 2011, pp. 18, 35.)

complex plan provisions and features, and greater communications needs due to the geographic dispersion of its population) than Company B (*e.g.*, participants in a single location with a simplified retirement plan design and minimal communications requirements). In this situation, Company A's plan would be expected to have higher overall administrative costs than Company B's plan.

65. As discussed in **Section V.A**, the number of Safeway store locations, coupled with high levels of employee turnover, would have substantially increased the administrative complexity of servicing the Safeway Plan. When 401(k) plans have multiple locations and high levels of turnover, the responsibilities of the service provider with respect to determining eligibility, providing enrollment materials, obtaining contribution and investment elections, and monitoring employees that transfer between locations increase substantially.

66. In addition, as discussed in **Section VI.A**, the breadth of services provided by JPMRPS and Great-West RPS to the Safeway Plan exceeded those typically provided by administrative service providers. The non-standard administrative services (*i.e.*, services that were not typically provided by administrative service providers) provided by JPMRPS to the Safeway Plan included administering dividend "pass through" elections and assistance with respect to the preparation of proxy materials.

3. Benchmarking analyses are not intended to determine the specific costs associated with operating a plan

67. As discussed above, plan costs and fees attributable to administrative services are affected by a number of factors that vary by plan. Care should be taken, to the extent possible and permitted by the data, to consider the impact of these factors when interpreting the results from a benchmarking comparison analysis. In addition, and as noted by Hewitt in their

presentation to the Nevada System of Higher Education, "Total Plan Cost benchmarking is intended to provide a basis for assessing the reasonability of total plan fees."[108] Plan cost benchmarking is not intended to determine what the specific cost of a plan should be, and one cannot assume that the costs of providing services for participants with different account balances are the same, or determine whether fees are reasonable or unreasonable without considering plan provisions, servicing requirements, asset allocations, and all of the other factors that influence plan costs.[109]

B. The Safeway Plan's Total Costs and Administrative Fees Were Reasonable and Within the Range of Costs Paid by Other Comparable Plans

68. In order to further assess the reasonableness of the Safeway Plan's total plan costs and administrative fees paid to JPMRPS and Great-West RPS, I compared the Plan's costs during the Review Period to OHC proprietary data collected from various defined contribution plan fee benchmarking projects that I have performed. It is common, in my view, to use proprietary databases in fee benchmarking assignments.[110] Considering the important benchmarking principles described above, I identified 13 plans that are similar to the Safeway Plan in terms of

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[108] Hewitt Ennisknupp, "Total Plan Cost Benchmarking," Presentation to Nevada System of Higher Education, November 14, 2014, at p. 11.

[109] From the 2011 Deloitte/Investment Company Institute Study: "Fees of 401(k) plans vary greatly due to unique plan characteristics; plan/investment design; and range, quantity and quality of services negotiated between the plan sponsor and retirement service providers. As such, there are a large number of variables impacting the fees that plans and participants pay." (Deloitte/ICI, "Inside the Structure of Defined Contribution/401(k) Plan Fees: A Study Assessing the Mechanics of the 'All-In' Fee," November 2011, at p. 22.)

[110] As a 2018 Callan survey explains, "Over three quarters of plan sponsors (77.2%) benchmarked the level of plan fees as part of their fee calculation process, down slightly from last year (79.2%). […] In the majority of cases, the consultant/adviser conducts the benchmarking (82.8%). This is higher than in prior years. Conversely, fewer plan sponsors are benchmarking their own plan fees than in prior years. Plan sponsors tend to use multiple data sources in benchmarking, though consultant databases (49.4%) and general benchmarking data (46.0%) are the most frequently cited." (Callan, "2018 Defined Contribution Trends Survey," at p. 44.)

total assets or number of participants with account balances (*i.e.*, the OHC Plans).[111] I then analyzed the costs associated with the Safeway Plan relative to these 13 plans by examining total plan costs as percentage of assets and the amount of administrative fees per participant. I also considered a 2012 Hewitt presentation in which Hewitt analyzed the total plan costs of the Safeway Plan.[112] Further, I reviewed total plan costs and per participant administrative fees reported in industry surveys, focusing on data specific to plans comparable in terms of Plan assets and count of participants with balances when available.

69. Based on my benchmarking analysis, the Safeway Plan's total costs and fees paid to JPMRPS and Great-West RPS for administrative services were reasonable and well within the range of costs paid by other comparable plans, including plans that I identified during the course of my work with OHC, plans identified by Hewitt in its analysis of the Safeway Plan's total costs, and plans identified in industry surveys with comparable plan assets and participant counts.

1. The Safeway Plan's total costs were within the range of total costs for comparable defined contribution plans

70. In **Exhibit 4**, I present a summary of the estimated total plan costs as a percentage of Plan

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[111] In performing my benchmarking comparisons, I relied on the following sources of information: (1) my experience in providing and pricing services to defined contribution plans; (2) my experience in benchmarking total plans costs and average administrative fees per participant for defined contribution plans; and (3) publicly reported information on defined contribution plan costs.

The OHC Plans include 13 defined contribution plans with either $500 million or more in assets or 5,000 or more participants with balances for which OHC performed analyses of plan costs and fees for administrative services from August 2009 through January 2017. I consider data from August through December of 2009 to be reasonably close to the beginning of the Review Period (*i.e.*, 2010) for inclusion in my benchmarking analysis of the Safeway Plan in 2010, and data from January 2017 to be reasonably close to the end of the Review Period (*i.e.*, 2016) for inclusion in my benchmarking analysis of the Safeway Plan in 2016. I provide more details regarding each of these plans in **Appendix C**.

[112] *See* Hewitt Ennisknupp, "401(k) Total Plan Cost Analysis," January 2012 (AON0039831 - AON0039842).

assets for the Safeway Plan during the Review Period. Total plan costs (also known as "all-in" fees) represent all costs associated with the operation of the plan.[113] These costs include investment management fees, administrative costs, and additional costs associated with communications, investment education, compliance, and trust custody services.[114] For benchmarking purposes, costs paid by individual participants that are specific to transactions and services selected by the participant (*e.g.*, loan processing fees) are excluded. For plans that operated within a bundled service arrangement, where there are no explicit additional administrative fees, total plan costs are generally equivalent to the blended expense ratio for the plan. Total plan costs for the Safeway Plan were calculated as the sum of total fees collected through the expense ratios of the investment options and the remaining direct administrative fee not collected through revenue sharing.[115] The Safeway Plan's estimated total costs averaged 0.43% over the Review Period, ranging from a high of 0.46% in 2010 to a low of 0.36% in 2014.[116]

[113] *See, e.g.*, Deloitte/ICI, "Inside the Structure of Defined Contribution/401(k) Plan Fees, 2013: A Study Assessing the Mechanics of the 'All-In' Fee," August 2014, at p. 4.

[114] As previously noted, I also include consulting, audit, and investment advisory costs in my analysis of total plan costs for the Safeway Plan for the years in which these costs were paid through revenue sharing.

[115] In **Exhibit 4**, I calculate Estimated Total Plan Costs as the sum of total fees collected through the expense ratios of the investment options ("Total Investment Costs") and the remaining direct administrative fee not collected through revenue sharing ("Remaining Required Direct Administrative Fees"). *See* **Exhibit 4** for additional details.

[116] Contrary to Plaintiff Terraza's claim that Safeway "did not engage in any detailed examination of whether there were better and/or less costly investment options available to the Plan and its participants," Plan participants were provided with investment options that decreased their investment costs. (Terraza Complaint, ¶ 35.) In particular, Plan participants experienced cost savings as a result of the Plan's use of separate accounts. For example, in 2014, the PIMCO Total Return Fund, which had an expense ratio of 0.71%, was transitioned to the PIMCO Bond Fund, which was a separate account and had an expense ratio of 0.27%. In addition, also in 2014, the RS Partners Fund, which had an expense ratio of 1.17%, was transitioned to the RS Small Cap Value Fund, which was a separate account with an expense ratio of 0.75%. (**Exhibit 3**; Plan Committee Meeting Minutes, September 2013 (SWY_TR00017583 - SWY_TR00017586, at 585); Plan Committee Meeting Discussion Guide, September 2013 (SWY_TR00015772 - SWY_TR00015852, at 794-795); Hewitt Performance Review and Investment Manager Evaluation, Q3 2014 (SWY_TR00017836 - SWY_TR00017897, at 847); Hewitt Performance Review and Investment Manager Evaluation, Q4 2014 (SWY_TR00019176 - SWY_TR00019237, at 187).)

71. As shown in **Exhibits 5 and 6**, the Safeway Plan's estimated total plan costs were within the range of total plan costs for the OHC benchmarked group of plans throughout the entire Review Period. In 2010 and 2011, the Safeway Plan's estimated total costs were 0.46% and 0.42%, respectively, compared to the total plan costs ranging from 0.36% to 0.73% for the OHC Plans. From 2012 through 2014, the Safeway Plan's estimated total costs ranged from 0.36% and 0.42%, compared to the OHC Plans' total costs of 0.25% to 0.59%. Lastly, the Safeway Plan's total costs of 0.45% and 0.44% in 2015 and 2016, respectively, were within the range of total plan costs for the OHC Plans of 0.18% to 0.59%.

72. The results of my benchmarking analysis based on comparisons to the OHC Plans' total costs are broadly consistent with Hewitt's analysis of the Safeway Plan's total costs performed in January 2012. Hewitt's total cost analysis for the Safeway Plan was based on data for 461 defined contribution plans as of December 2010, which Hewitt used to create four groups of comparables.[117] For Hewitt's four groups of comparable defined contribution plans, the median total plan costs in 2010 ranged from 0.39% to 0.64%, compared to the Safeway Plan's estimated total costs of 0.46% as shown in **Exhibit 5**.[118] In particular, Hewitt's presentation noted that the Safeway Plan's total cost was "below that of the median plan in the Best-Fit Universe

[117] The sets of comparable plans included 461 plans (all comparators), 95 plans with assets between $1 billion and $4 billion, 130 plans with average participant account balances between $25,000 and $50,000, and a "best-fit universe" composed of 19 plans that had average assets of $1.6 billion and average participants of 38,631. (Hewitt Ennisknupp, "401(k) Total Plan Cost Analysis," January 2012 (AON0039831 - AON0039842, at 836-837); **Exhibit 5**.)

[118] Hewitt compared the median total plan costs for the four groups of comparable plans to the total plan costs for the Safeway Plan as of September 30, 2011, which it calculated as 0.44%. Hewitt's total plan cost for the Safeway Plan is consistent with the total plan cost that I have estimated for the Safeway Plan of 0.42% as of year-end 2011. (Hewitt Ennisknupp, "401(k) Total Plan Cost Analysis," January 2012 (AON0039831 - AON0039842, at 836, 838).)

(0.51%)."[119]

73. Publicly-available survey data also confirm that the Safeway Plan's total costs were well within the range of total costs for comparable plans in terms of plan assets and participant counts.

a. As previously noted, the NEPC reports data based on surveys of defined contribution plans with plan assets and participant counts comparable to those of the Safeway Plan.[120] As shown in **Exhibit 5**, the Safeway Plan's total cost percentages for 2010 to 2015 were less than the median total cost of plans reported by NEPC over the same period, which ranged from 0.46% to 0.59%, and only one basis point higher (*i.e.*, 0.01 percentage point) than the median total cost reported by NEPC in 2016.

b. Further, the Plan's total costs were within the range of total costs for defined contribution plans with more than $1 billion in plan assets as reported by BrightScope/ICI from 2012 through 2014. Specifically, as shown in **Exhibit 5**, total plan costs in BrightScope/ICI's surveys ranged from 0.14% to 0.52% for plans with more than $1 billion in assets from 2012 through 2014,[121] compared to

[119] Hewitt Ennisknupp, "401(k) Total Plan Cost Analysis," January 2012 (AON0039831 - AON0039842, at 838.

[120] In the 2014 NEPC survey of 113 plans, for example, the average plan had $1.1 billion in assets and 12,091 participants. The median plan had $495 million in assets and 6,545 participants. (Cress, K., "State Universities Retirement System of Illinois: NEPC DC Plan and Fee Survey & Self-Managed Plan Update," September 18, 2014, at p. 2.)

[121] The BrightScope/ICI surveys present the range of total plan costs at the 10th and 90th percentiles, which results in the exclusion of outliers.

In **Exhibit 5**, I also show the median, average, and range of total plan costs for plans with between $500 million and $1 billion in assets in the BrightScope/ICI surveys. Compared to plans with between $500 million and $1 billion in assets, the Safeway Plan's total costs, which ranged from 0.36% to 0.42% from 2012 through 2014, were within the range of total plan costs (0.22% to 0.63%) and below the median and average total plan costs.

the range of Safeway Plan's total costs of 0.36% to 0.42% over the same period. In addition, the lower than average participant balances in the Safeway Plan relative to participant balances in other defined contribution plans[122] is consistent with the Safeway Plan having higher total costs than the median and average total costs of plans in BrightScope/ICI's survey.

c. Similarly, the Deloitte/ICI surveys in 2011 and 2013 also indicate that the Plan's total costs were reasonable. As shown in **Exhibit 5**, for plans with more than $1 billion in assets in 2011, total plan costs ranged from 0.13% and 0.56%, compared to the Safeway Plan's total costs of 0.46% and 0.42% in 2010 and 2011, respectively.[123] In addition, for plans with more than 10,000 participants, total plan costs in Deloitte/ICI's survey ranged from 0.21% to 1.03% in 2011, and from 0.24% to 0.87% in 2013, also indicating that the Safeway Plan's total costs were well within the range of total costs for comparable plans in terms of plan participants.[124]

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[122] *See* **Exhibit 1**. In 2015, the average account balance for Vanguard participants was more than $96,000. (Vanguard, "How America Saves 2016," June 2016, at p. 4.)

[123] The Deloitte surveys present the range of total plan costs at the 10th and 90th percentiles, which results in the exclusion of outliers.

In **Exhibit 5**, I also show the median, average, and range of total plan costs for plans with between $500 million and $1 billion in assets in the Deloitte/ICI 2011 survey. Compared to plans with between $500 million and $1 billion in assets, the Safeway Plan's total costs of 0.46% and 0.42% in 2010 and 2011, respectively, were less than the median and average total plan costs.

Compared to plans with more than $500 million in assets in the Deloitte/ICI 2013 survey, the Safeway Plan's total costs, which ranged from 0.36% to 0.42% between 2012 and 2014, were consistent with the median and average total plan costs (0.37% and 0.41%, respectively).

[124] Median and average total plan costs for plans with more than 10,000 participants in the Deloitte ICI 2011 survey were 0.43% and 0.50%, respectively, compared to total plan costs of 0.46% and 0.42% for the Safeway Plan in 2010 and 2011, respectively. Median and average total plan costs for plans with more than 10,000 participants in the Deloitte/ICI 2013 survey were 0.39% and 0.46%, respectively, compared to total plan costs ranging from 0.36% to 0.42% for the Safeway Plan from 2012 through 2014.

d. In 2014, Hewitt published a total plan cost analysis survey that included data from 380 defined contribution plans as of December 2012.[125] The survey reported average total plan costs of 0.49% across all 380 defined contribution plans and 0.42% across a smaller set of 82 defined contribution plans with plan assets ranging from $0.8 billion to $2.19 billion.[126] The total costs of the Safeway Plan, which ranged from 0.36% to 0.42% from 2012 and 2014, was less than or equal to the average total costs for these two groups of plans reported in the Hewitt survey.

2. The Safeway Plan's administrative fees were within the range of per participant administrative fees for comparable defined contribution plans

74. In **Exhibit 4**, I summarize the fixed, per participant fees received by JPMRPS and Great-West RPS for the administrative services provided to the Safeway Plan during the Review Period. Average administrative fees per participant is a benchmarking component that is used to assess the reasonableness of administrative fees and is calculated as the fees received by administrative service providers, typically reported as the sum of recordkeeping and trustee fees,[127] divided by the number of participants with a balance in the plan.[128] It is important to

[125] Hewitt Ennisknupp, "Total Plan Cost Benchmarking," Presentation to Nevada System of Higher Education, November 14, 2014, at pp. 11, 38.

[126] Hewitt's presentation to the Nevada System of Higher Education also included two smaller groups of defined contribution plans: a group of 33 plans named "Participant Count 5,500 - 7500" and a group of 10 plans named "Assets & Participant Count Constraints." (Hewitt Ennisknupp, "Total Plan Cost Benchmarking," Presentation to Nevada System of Higher Education, November 14, 2014, at p. 38.)

[127] *See, e.g.*, Hewitt Ennisknupp, "401(k) Total Plan Cost Analysis," January 2012 (AON0039831 - AON0039842, at 840); Hewitt Ennisknupp, "Total Plan Cost Benchmarking," Presentation to Nevada System of Higher Education, November 14, 2014, at p. 40; NEPC, "NEPC 2014 Defined Contribution Plan & Fee Survey: What Plan Sponsors Are Doing Now," October 2014, at p. 3.

[128] For example, a plan with total administrative revenues of $75,000 and 1,000 plan participants would have, for benchmarking purposes, administrative revenues of $75 per participant.

note that the average administrative fee does not account for fees paid by the plan sponsor, and the fees paid by the plan sponsor vary across plans. One plan, for example, may charge participants a fee to cover costs such as, for example, accounting fees, separate trust fees, or communications fees, whereas another plan may have these fees paid by the plan sponsor. During the Review Period, the Plan's fixed, per participant administrative fees were $67 in 2010, $65 from 2011 through 2014, and $52 from 2015 through 2016.[129]

75. As shown in **Exhibits 7 and 8**, the Safeway Plan's per participant administrative fees were well within the range of administrative per participant fees for the OHC benchmarked group of plans. In 2010 and 2011, the Safeway Plan's per participant administrative fees were $67 and $65, respectively, compared to the range of per participant administrative fees of $58 to $116 and average and median per participant administrative fees of $86 and $94, respectively, for the OHC Plans. From 2012 through 2014, the Safeway Plan's administrative fees were $65 per participant, compared to the OHC Plans' range of per participant administrative fees of $50 to $110 and average and median per participant administrative fees of $83 and $84, respectively. Lastly, the Safeway Plan's administrative fees of $52 per participant in 2015 and 2016 was within the range of per participant administrative fees for the OHC Plans of $26 to $62, and consistent with the OHC Plans' average and median per participant administrative fee of $47 and $45, respectively.

76. Hewitt's January 2012 analysis of the Safeway Plan also demonstrated that its

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[129] Effective January 1, 2009, the per participant fee was fixed at $67. The fee changed to $65 effective July 18, 2011, and again to $52 effective April 1, 2015. For the purposes of my benchmarking analysis, each fixed per participant fee has been assumed to remain constant throughout the year based on the fee as of the end of the year. (Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 694); Amendment to Master Services Agreement, effective July 18, 2011 (SWY_TR00000664 - SWY_TR00000668, at 664); Email from B. Tankovich to M. Boylan, "FW: MSA Amendment," April 27, 2015 (SWY_TR00006427 - SWY_TR00006435, at 427).)

administrative fees were reasonable. Specifically, for Hewitt's four groups of comparable defined contribution plans based on data as of 2010,[130] the median per participant administrative fee ranged from $56 to $102, compared to the Safeway Plan's per participant administrative fee of $67 in 2010, as shown in **Exhibit 7**.[131] Hewitt's presentation also stated that the Safeway Plan's per participant administrative fees were "slightly above those of the median plan in the Best-Fit Universe ($56 per participant)."[132]

77. Further, the Safeway Plan's administrative fees were lower than the per participant administrative fees reported in industry surveys for plans with comparable assets and participant counts.

a. As shown in **Exhibit 7**, in every year of the Review Period, the Safeway Plan's per participant administrative fees were less than the median per participant administrative fees reported by NEPC, which provides survey data for plans that are comparable to the Safeway Plan.

b. In addition, according to the benchmarking analysis of administrative fees published by Hewitt in 2014, per participant administrative fees were $84 per participant in 2012 across all plans in Hewitt's study, and $76 per participant for

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[130] As previously noted, the sets of comparable plans included all 461 plans, 95 plans with assets between $1 billion and $4 billion, 130 plans with average participant account balances between $25,000 and $50,000, and a "best-fit universe" composed of 19 plans that had median assets of $1.6 billion and median participants of 38,631. (Hewitt Ennisknupp, "401(k) Total Plan Cost Analysis," January 2012 (AON0039831 - AON0039842, at 836-837); **Exhibit 7**.)

[131] Hewitt compared the median per participant administrative fees for the four groups of comparable plans to that of the Safeway Plan as of September 30, 2011, which was $65 per participant. (Hewitt Ennisknupp, "401(k) Total Plan Cost Analysis," January 2012 (AON0039831 - AON0039842, at 836, 840).)

[132] The Hewitt analysis also showed that the Safeway Plan administrative fee of $65 per participant (as of September 30, 2011) was lower than the median of the 95 plans with assets between $1 billion and $4 billion ($70 per participant), the median of the 130 plans with participants with account balances between $25,000 and $50,000 ($93 per participant), and the median of all 461 plans ($102 per participant). *See* **Exhibit 7**.

plans with assets of $0.81 to $2.19 billion.[133] In comparison, the fee to JPMRPS for the administrative services provided to the Safeway Plan was $65 per participant in 2012.[134]

VIII. THE EXISTING FEE ARRANGEMENT WITH JPMRPS AND GREAT-WEST RPS BENEFITTED PARTICIPANTS WITH SMALLER BALANCES

78. Plaintiff Terraza alleges that the Safeway Plan "effectively discriminates against one class of participants in favor of another class of participants" due to its failure to "rebalance revenue sharing payments to engage in fee equalization for participants."[135] This allegation ignores the reality that any fee structure used to pay the Plan's costs can be viewed as favoring one group over another group.[136] Asset-based fee arrangements benefit participants with smaller balances (typically newly eligible participants), whereas "fee equalization" arrangements benefit participants with larger balances (typically longer service participants). Indeed, depending on how a given participant's account balance changes over time (*e.g.*, increases or decreases), the same participant can both benefit or be disadvantaged by either revenue sharing or "fee

[133] Hewitt Ennisknupp, "Total Plan Cost Benchmarking," Presentation to Nevada System of Higher Education, November 14, 2014, at p. 40.

[134] As I noted above, Hewitt's presentation to the Nevada System of Higher Education also included two smaller groups of defined contribution plans: a group of 33 plans named "Participant Count 5,500 - 7500" and a group of 10 plans named "Assets & Participant Count Constraints." (Hewitt Ennisknupp, "Total Plan Cost Benchmarking," Presentation to Nevada System of Higher Education, November 14, 2014, at p. 40.)

[135] Terraza Complaint, ¶ 68. While Plaintiff Terraza's allegation addresses claims related to "one class of participants in favor of another class of participants," I understand that Plaintiff Terraza has also brought forth this litigation both individually and on behalf of the Safeway Plan. *See* Terraza Complaint. Likewise, I understand that Plaintiff Lorenz has brought forth this litigation both individually and on behalf of the Safeway Plan. *See* Lorenz Complaint.

[136] Asset-based fees may be argued to favor participants with smaller balances who would effectively pay fewer dollars than would participants with larger balances. Conversely, a fee structure that assessed the same dollar amount to each participant's account may be argued to favor larger accounts as this fee structure has a smaller effect on the returns net of fees on accounts with larger balances than on accounts with smaller balances. Moreover, because many fees are not based on usage, both types of fee structure would allow some participants to utilize call systems more heavily and make more frequent transactions than other participants who may pay the same fee.

equalization."

A. Revenue Sharing Benefits Participants with Smaller Balances, Typically Newly Eligible Participants, While "Fee Equalization" Benefits Participants with Larger Balances, Typically Longer Service Participants

79. While the statement that asset-based revenue sharing payments may "favor" certain participants may be true, Plaintiff Terraza's allegation fails to fully describe the potential impact of revenue sharing across all Plan participants, as well as the potential impact on the same participant over time. As I demonstrate below, the existing revenue sharing arrangement benefitted participants with smaller balances, while "fee equalization" would have benefitted participants with larger balances.

80. First, Plaintiff Terraza's allegation fails to consider that a newly enrolled Plan participant who has just begun to contribute to the Safeway Plan would benefit from an asset-based fee arrangement.[137] To demonstrate, assume that there are two participants who each invest in one fund that allocates 0.25% of assets to revenue sharing. A participant with a smaller balance of $1,000 would contribute $2.50 in revenue sharing, while a participant with a larger balance of $100,000 would contribute $250.[138] Thus, participants with smaller balances would contribute a smaller dollar amount than participants with a higher balance. Because participant balances generally increase over time (due to additional contributions and returns), a fee structure that favors accounts with smaller balances will also tend to favor newer participants.

81. Further, Plaintiff Terraza's allegation fails to consider that "fee equalization"

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[137] As discussed in **Section VI.B**, regardless of the revenue sharing amounts collected from each Plan participant, JPMRPS/Great-West RPS would continue to receive the fixed, per participant fees agreed to in the MSA and subsequent amendments.

[138] Calculated as an account balance of $1,000 multiplied by 0.25% revenue sharing, or $2.50, and an account balance of $100,000 multiplied by 0.25% revenue sharing, or $250.

arrangements would "discriminate" in favor of higher balance/longer service participants, and "discriminate" against lower balance/shorter service participants. Continuing with the same example provided above, and assuming that JPMRPS receives a fixed, per participant fee of $65, under "fee equalization," each participant, one with a smaller balance of $1,000 and the other with a larger balance of $100,000, would pay $65 for administrative services. The participant with a smaller balance of $1,000 would receive back its revenue sharing of $2.50 (as administrative services would now be paid from the fixed, per participant fee of $65, not revenue sharing), and, on net, the participant would *pay* $62.50.[139] In contrast, the participant with a larger balance of $100,000 would receive back its revenue sharing of $250 and, on net, would *receive* a fee credit of $185.[140]

82. Thus, as illustrated by the above examples, revenue sharing benefits smaller balance, typically newly eligible participants, whereas "fee equalization" benefits larger balance, typically longer service participants.

B. Plan Participants, Including Plaintiffs Terraza and Lorenz, Received Sufficient Fee Disclosures

83. Plaintiff Terraza claims that the Plan did not provide adequate information regarding "the costs and performance of the Plan's investments."[141] Contrary to Plaintiff's claims, however, Hewitt's review of the Safeway Plan's fee disclosures, as well as an examination of Plaintiffs' account statements themselves, demonstrate that Plan participants were provided with sufficient fee disclosures.

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[139] Calculated as the fixed, per participant fee of $65 minus the participant's revenue sharing contribution of $2.50.

[140] Calculated as the fixed, per participant fee of $65 minus the participant's revenue sharing contribution of $250.

[141] Terraza Complaint, ¶ 54.

84. During the Committee meeting in March 2011, Hewitt presented its finding from survey data specific to large plans, including information related to recordkeeping fees, participant fee disclosures, and plan expenses.[142] The Committee Meeting Minutes state that Hewitt "offered the opinion that Safeway has done an excellent, perhaps best-in-class, job of making fee disclosures to participants."[143] Further, Hewitt's survey indicated that, with respect to the Safeway Plan, "fees are disclosed on the participant website (safeway401k.com), quarterly participant statements (included on the fund performance section), and on the Fund Line-up that is included in the Enrollment Kit."[144]

85. Plaintiff Terraza's claim that Plan participants received insufficient information regarding the fees and performance of the investment funds is simply not credible based on my review of the participant statements. Specifically, Plaintiffs' statements reported direct fee amounts debited from their accounts as well as the expense ratios of each of the investment options.[145] Moreover, participant statements included periodic and customized messages for Plan participants to closely monitor their account balances.[146] Each participant account statement also noted that were three sources from which Plan participants could receive information regarding

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[142] Hewitt Ennisknupp, "Survey Findings on Defined Contribution Fee Allocations," March 2011 (SWY_TR00005619 - SWY_TR00005625); Plan Committee Meeting Minutes, March 21, 2011 (SWY_TR00016232 - SWY_TR00016235, at 234).

[143] Plan Committee Meeting Minutes, March 21, 2011 (SWY_TR00016232 - SWY_TR00016235, at 234).

[144] Hewitt Ennisknupp, "Survey Findings on Defined Contribution Fee Allocations," March 2011 (SWY_TR00005619 - SWY_TR00005625, at 622).

[145] *See, e.g.*, Terraza Statement, January 1, 2010 to March 31, 2010 (SWY_TR00003672 - SWY_TR00003681, at 673, 675-677).

[146] For instance, the September 30, 2011 statement for Plaintiff Terraza noted the following: "You've initiated 1 loans and or withdrawals within the past year. To learn how this activity can affect your future, visit your plan's Web site." (Terraza Statement, July 1, 2011 to September 30, 2011 (SWY_TR00003764 - SWY_TR00003771, at 767).) The December 31, 2012 statement included the following message: "What are you missing by not saving in your 401(k) plan? To find out or sign up, visit your plan's Web site." (Terraza Statement, October 1, 2012 to December 31, 2012 (SWY_TR00003814 - SWY_TR00003823, at 816).)

the Plan and the management of participant accounts: (1) the Plan website (www.safeway401k.com), (2) phone, or (3) mail through the Safeway Companies Benefits Service Center.[147] In my opinion, such level of disclosures would have provided Plan participants with sufficient information with regard to the level of fees.

[147] *See, e.g.*, Terraza Statement, January 1, 2010 to March 31, 2010 (SWY_TR00003672 - SWY_TR00003681, at 672).

Respectfully submitted, this 22nd day of May 2018,

Steven K. Gissiner

Exhibit 1

Safeway, Inc. 401(k) Plan
Plan Assets and Participants
2010 - June 2016

Year	Total Plan Assets (in millions)[1]	Number of Participants with Balances[2]	Average Assets per Participant with Balance
2010	$1,409.70	40,007	$35,236
2011	$1,497.10	38,199	$39,192
2012	$1,588.20	37,496	$42,357
2013	$1,905.40	37,203	$51,216
2014	$1,940.20	36,968	$52,483
2015	$1,793.04	36,466	$49,170
June 2016	$1,794.19	35,908	$49,967

Notes:

[1] Total Plan Assets as reported in the Hewitt Performance Review and Investment Manager Evaluations for Q4 2010-2011 and Hewitt Quarterly Investment Reviews for Q4 2012-2015 and Q2 2016.

[2] Number of Participants with Balances as reported in the Safeway Plan's Form 5500 filings. Number of Participants with Balances in June 2016 calculated as the average of year-end 2015 and 2016.

Sources:

[A] Safeway Inc. Performance Review and Investment Manager Evaluation Q4 2010, Q4 2011.

[B] Safeway Inc. 401(k) Plan Quarterly Investment Review Q4 2012 - Q4 2015, Q2 2016.

[C] Safeway Inc. 401(k) Plan Form 5500, 2010-2016.

Exhibit 2
Safeway, Inc. 401(k) Plan
Plan Assets by Investment Option
2010 - June 2016

	Investment	2010		2011		2012		2013		2014		2015		June 2016	
Investment Option	**Vehicle**[2]	**$**	**%**	**$**	**%**	**$**	**%**	**$**	**%**	**$**	**%**	**$**	**%**	**$**	**%**
Stable Value															
Interest Income Fund	SA	383.3	27.2%	429.1	28.7%	416.7	26.2%	414.6	21.8%	384.5	19.8%	368.8	20.6%	370.6	20.7%
Fixed Income															
PIMCO Total Return Fund	MF	153.9	10.9%	168.5	11.3%	184.7	11.6%	162.2	8.5%						
PIMCO Bond Fund	SA									154.8	8.0%	136.3	7.6%	141.1	7.9%
Subtotal		**153.9**	**10.9%**	**168.5**	**11.3%**	**184.7**	**11.6%**	**162.2**	**8.5%**	**154.8**	**8.0%**	**136.3**	**7.6%**	**141.1**	**7.9%**
Target-Date Funds															
BlackRock LifePath Index Retirement	CF	5.9	0.4%												
BlackRock LifePath Index 2015	CF	14.1	1.0%												
BlackRock LifePath Index 2020	CF	18.0	1.3%												
BlackRock LifePath Index 2025	CF	14.0	1.0%												
BlackRock LifePath Index 2030	CF	11.6	0.8%												
BlackRock LifePath Index 2035	CF	10.0	0.7%												
BlackRock LifePath Index 2040	CF	8.8	0.6%												
BlackRock LifePath Index 2045	CF	11.8	0.8%												
JPMorgan SmartRetirement Passive Blend Income	CF			6.3	0.4%	7.0	0.4%	8.4	0.4%	22.6	1.2%	19.3	1.1%	18.8	1.0%
JPMorgan SmartRetirement Passive Blend Income 2015	CF			15.8	1.1%	17.0	1.1%	18.4	1.0%	41.7	2.1%	32.5	1.8%	31.6	1.8%
JPMorgan SmartRetirement Passive Blend Income 2020	CF			21.0	1.4%	25.9	1.6%	32.7	1.7%	39.9	2.1%	76.6	4.3%	78.8	4.4%
JPMorgan SmartRetirement Passive Blend Income 2025	CF			18.1	1.2%	22.5	1.4%	30.2	1.6%	32.5	1.7%	77.5	4.3%	80.5	4.5%
JPMorgan SmartRetirement Passive Blend Income 2030	CF			13.5	0.9%	18.0	1.1%	24.4	1.3%	29.1	1.5%	60.4	3.4%	63.5	3.5%
JPMorgan SmartRetirement Passive Blend Income 2035	CF			12.4	0.8%	16.3	1.0%	22.9	1.2%	20.8	1.1%	48.4	2.7%	51.0	2.8%
JPMorgan SmartRetirement Passive Blend Income 2040	CF			9.6	0.6%	12.3	0.8%	16.9	0.9%	28.2	1.5%	30.5	1.7%	32.0	1.8%
JPMorgan SmartRetirement Passive Blend Income 2045	CF			13.2	0.9%	17.5	1.1%	24.2	1.3%	8.6	0.4%	33.5	1.9%	36.1	2.0%
JPMorgan SmartRetirement Passive Blend Income 2050	CF			0.3	0.0%	1.6	0.1%	4.7	0.2%	10.6	0.5%	13.0	0.7%	15.1	0.8%
Subtotal		**94.2**	**6.6%**	**110.2**	**7.3%**	**138.1**	**8.6%**	**182.8**	**9.6%**	**234.0**	**12.1%**	**391.8**	**21.9%**	**407.4**	**22.7%**

Exhibit 2
Safeway, Inc. 401(k) Plan
Plan Assets by Investment Option
2010 - June 2016

Investment Option	Investment Vehicle[2]	2010 $	2010 %	2011 $	2011 %	2012 $	2012 %	2013 $	2013 %	2014 $	2014 %	2015 $	2015 %	June 2016 $	June 2016 %
U.S. Equity															
SSgA S&P 500	CF	238.9	16.9%	252.5	16.9%	278.1	17.5%	353.6	18.6%	389.0	20.0%	367.1	20.5%	371.0	20.7%
Dodge & Cox Stock Fund	MF	65.2	4.6%	64.2	4.3%	75.9	4.8%	112.5	5.9%	125.2	6.5%	106.8	6.0%	103.8	5.8%
Chesapeake Core Growth Fund	MF	45.4	3.2%												
Wells Fargo Adv Strategic Large Cap Growth	MF			46.1	3.1%										
Wells Fargo Adv Large Cap Growth	MF					53.9	3.4%	78.8	4.1%	87.8	4.5%	90.6	5.1%	83.3	4.6%
RS Partners Fund	MF	91.6	6.5%	86.4	5.8%	96.8	6.1%	134.9	7.1%						
RS Small Cap Value	SA									115.2	5.9%	90.9	5.1%	91.8	5.1%
Emerald Growth Fund	MF	58.5	4.2%	61.2	4.1%	68.0	4.3%	103.7	5.4%	102.7	5.3%	102.5	5.7%	93.7	5.2%
Subtotal		**499.6**	**35.4%**	**510.4**	**34.2%**	**572.7**	**36.1%**	**783.5**	**41.1%**	**819.9**	**42.2%**	**757.9**	**42.3%**	**743.6**	**41.4%**
International Equity															
EuroPacific Growth Fund	MF	93.1	6.6%	78.8	5.3%	88.9	5.6%	104.7	5.5%	97.3	5.0%	87.6	4.9%	81.9	4.6%
Company Stock															
Safeway Stock Fund		138.3	9.8%	150.3	10.0%	138.0	8.7%	205.5	10.8%	196.6	10.1%				
Other															
Loan/Other		47.5	3.4%	50.0	3.3%	49.0	3.1%	52.0	2.7%	53.1	2.7%	50.7	2.8%	49.6	2.8%
Total		**1,409.7**	**100%**	**1,497.1**	**100%**	**1,588.2**	**100%**	**1,905.4**	**100%**	**1,940.2**	**100%**	**1,793.0**	**100%**	**1,794.2**	**100%**

Notes:
[1] Plan Assets as reported in the Hewitt Performance Review and Investment Manager Evaluations for Q4 2010-2011 and Hewitt Quarterly Investment Reviews for Q4 2012-2015 and Q2 2016.
[2] "CF" is commingled fund, "MF" is mutual fund, and "SA" is separate account.

Sources:
[A] Safeway Inc. Performance Review and Investment Manager Evaluation Q4 2010, Q4 2011.
[B] Safeway Inc. 401(k) Plan Quarterly Investment Review Q4 2012 - Q4 2015, Q2 2016.

Exhibit 3
Safeway, Inc. 401(k) Plan
Expense Ratios and Revenue Sharing
2010 - June 2016

Investment Option	Investment Vehicle[1]	2010 Expense Ratio	2010 Revenue Sharing	2011 Expense Ratio	2011 Revenue Sharing	2012 Expense Ratio	2012 Revenue Sharing	2013 Expense Ratio	2013 Revenue Sharing	2014 Expense Ratio	2014 Revenue Sharing	2015 Expense Ratio	2015 Revenue Sharing	June 2016 Expense Ratio	June 2016 Revenue Sharing
Stable Value															
Interest Income Fund[3]	SA	0.25%	0.17%	0.25%	0.17%	0.25%	0.17%	0.25%	0.17%	0.25%	0.17%	0.50%	0.16%	0.50%	0.16%
Fixed Income															
PIMCO Total Return Fund	MF	0.71%	0.25%	0.71%	0.25%	0.71%	0.25%	0.71%	0.25%						
PIMCO Bond Fund	SA									0.27%	0.00%	0.27%	0.00%	0.27%	0.00%
Target-Date Funds															
BlackRock LifePath Index Retirement[4]	CF	0.65%	0.50%												
BlackRock LifePath Index 2015[4]	CF	0.65%	0.50%												
BlackRock LifePath Index 2020[4]	CF	0.65%	0.50%												
BlackRock LifePath Index 2025[4]	CF	0.65%	0.50%												
BlackRock LifePath Index 2030[4]	CF	0.65%	0.50%												
BlackRock LifePath Index 2035[4]	CF	0.65%	0.50%												
BlackRock LifePath Index 2040[4]	CF	0.65%	0.50%												
BlackRock LifePath Index 2045[4]	CF	0.65%	0.50%												
JPMorgan SmartRetirement Passive Blend Income	CF			0.50%	0.20%	0.45%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%
JPMorgan SmartRetirement Passive Blend Income 2015	CF			0.50%	0.20%	0.45%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%
JPMorgan SmartRetirement Passive Blend Income 2020	CF			0.50%	0.20%	0.45%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%
JPMorgan SmartRetirement Passive Blend Income 2025	CF			0.50%	0.20%	0.45%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%
JPMorgan SmartRetirement Passive Blend Income 2030	CF			0.50%	0.20%	0.45%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%
JPMorgan SmartRetirement Passive Blend Income 2035	CF			0.50%	0.20%	0.45%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%
JPMorgan SmartRetirement Passive Blend Income 2040	CF			0.50%	0.20%	0.45%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%
JPMorgan SmartRetirement Passive Blend Income 2045	CF			0.50%	0.20%	0.45%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%
JPMorgan SmartRetirement Passive Blend Income 2050	CF			0.50%	0.20%	0.45%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%	0.49%	0.20%

Exhibit 3
Safeway, Inc. 401(k) Plan
Expense Ratios and Revenue Sharing
2010 - June 2016

		2010		2011		2012		2013		2014		2015		June 2016	
Investment Option	**Investment Vehicle[1]**	**Expense Ratio**	**Revenue Sharing**	**Expense Ratio**	**Revenue Sharing**	**Expense Ratio**	**Revenue Sharing**	**Expense Ratio**	**Revenue Sharing**	**Expense Ratio**	**Revenue Sharing**	**Expense Ratio**	**Revenue Sharing**	**Expense Ratio**	**Revenue Sharing**
U.S. Equity															
SSgA S&P 500[5]	CF	0.25%	0.23%	0.15%	0.13%	0.15%	0.13%	0.15%	0.13%	0.15%	0.13%	0.15%	0.13%	0.15%	0.13%
Dodge & Cox Stock Fund	MF	0.52%	0.10%	0.52%	0.10%	0.52%	0.10%	0.52%	0.10%	0.52%	0.10%	0.52%	0.10%	0.52%	0.10%
Chesapeake Core Growth Fund	MF	1.38%	0.25%												
Wells Fargo Adv Strategic Large Cap Growth	MF			0.80%	0.15%										
Wells Fargo Adv Large Cap Growth[6]	MF					0.66%	0.15%	0.66%	0.15%	0.65%	0.15%	0.75%	0.05%	0.75%	0.05%
RS Partners Fund[7]	MF	1.10%	0.10%	1.13%	0.10%	1.21%	0.10%	1.17%	0.10%						
RS Small Cap Value	SA									0.75%	0.00%	0.78%	0.00%	0.78%	0.00%
Emerald Growth Fund	MF	0.99%	0.15%	0.99%	0.15%	0.99%	0.15%	0.99%	0.15%	0.99%	0.15%	0.99%	0.15%	0.87%	0.15%
International Equity															
EuroPacific Growth Fund	MF	0.56%	0.05%	0.55%	0.05%	0.55%	0.05%	0.55%	0.05%	0.54%	0.05%	0.53%	0.05%	0.54%	0.05%

Notes:

[1] "CF" is commingled fund, "MF" is mutual fund, and "SA" is separate account.

[2] Expense Ratios as reported in the Hewitt Performance Review and Investment Manager Evaluations for Q4 2010-2011 and Hewitt Quarterly Investment Reviews for Q4 2012-2015 and Q2 2016.

[3] For the Interest Income Fund, Revenue Sharing is the "wrapper" provided in the Hewitt Performance Review and Investment Manager Evaluations for Q4 2010-2011 and Hewitt Quarterly Investment Reviews for Q4 2012-2014, and the "recordkeeping revenue" provided in the Hewitt Quarterly Investment Reviews for Q4 2015 and Q2 2016.

[4] For the BlackRock LifePath Index Funds, Revenue Sharing is the "wrapper" provided in the Hewitt Performance Review and Investment Manager Evaluation for Q4 2010.

[5] For the SSgA S&P 500 Fund, Revenue Sharing is the "wrapper" provided in the Hewitt Performance Review and Investment Manager Evaluations for Q4 2010-2011 and Hewitt Quarterly Investment Reviews for Q4 2012-2014, and the "recordkeeping revenue" provided in the Hewitt Quarterly Investment Reviews for Q4 2015 and Q2 2016.

[6] For the Wells Fargo Adv Large Cap Growth Fund, Revenue Sharing is from the Hewitt Quarterly Investment Reviews for Q4 2013-Q4 2015 and Q2 2016.

[7] For the RS Partners Fund, Revenue Sharing is from the Amendment to the Master Services Agreement effective July 18, 2011 for 2010-2012, and Hewitt Quarterly Investment Reviews for Q4 2013.

[8] For investment options other than the Interest Income Fund, BlackRock LifePath Index Funds, SSgA S&P 500 Fund, Wells Fargo Adv Large Cap Growth Fund, and RS Partners Fund, Revenue Sharing is from the Master Service Agreement effective January 1, 2009 for 2010, Amendment to the Master Services Agreement effective July 18, 2011 for 2011-2012, and Hewitt Quarterly Investment Reviews for Q4 2013-2015 and Q2 2016.

Sources:

[A] Safeway Inc. Performance Review and Investment Manager Evaluation Q4 2010, Q4 2011.

[B] Safeway Inc. 401(k) Plan Quarterly Investment Review Q4 2012 - Q4 2015, Q2 2016.

[D] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 694); Amendment to Master Services Agreement, effective July 18, 2011 (SWY_TR00000664 - SWY_TR00000665, at 664).

Exhibit 4
Safeway, Inc. 401(k) Plan
Estimated Total Plan Costs
2010 - June 2016

		2010	2011	2012	2013	2014	2015	June 2016
Number of Participants with Balances[1,A]	[A]	40,007	38,199	37,496	37,203	36,968	36,466	35,908
Total Plan Assets (millions)[2,A]	[B]	$ 1,409.70	$ 1,497.10	$ 1,588.20	$ 1,905.40	$ 1,940.20	$ 1,793.04	$ 1,794.19
Fixed, Per Participant Administrative Fee[3,B]	[C]	$ 67.00	$ 65.00	$ 65.00	$ 65.00	$ 65.00	$ 52.00	$ 52.00
Total Administrative Fees (millions)	[D] = [A]*[C]	$ 2.68	$ 2.48	$ 2.44	$ 2.42	$ 2.40	$ 1.90	$ 1.87
Revenue Sharing								
Total Revenue Sharing (millions)[4,A]	[E]	$ 2.46	$ 2.05	$ 2.21	$ 2.51	$ 2.09	$ 2.20	$ 2.22
As % of Total Administrative Fees	[F] = [E]/[D]	91.83%	82.58%	90.59%	103.76%	86.85%	116.05%	118.74%
Remaining Required Direct Administrative Fees (millions)[5]	[G] = [D]-[E]	$ 0.22	$ 0.43	$ 0.23	$ -	$ 0.32	$ -	$ -
Total Plan Costs								
Total Investment Costs (from Expense Ratios, millions)[6,A]	[H]	$ 6.33	$ 5.92	$ 6.48	$ 7.90	$ 6.74	$ 8.11	$ 7.92
As % of Total Plan Assets	[I] = [H]/[B]	0.45%	0.40%	0.41%	0.41%	0.35%	0.45%	0.44%
Total Investment Costs Plus Remaining Required Direct Administrative Fees (millions)	[J] = [H]+[G]	$ 6.55	$ 6.35	$ 6.70	$ 7.90	$ 7.05	$ 8.11	$ 7.92
Estimated Total Plan Costs	**[K] = [J]/[B]**	**0.46%**	**0.42%**	**0.42%**	**0.41%**	**0.36%**	**0.45%**	**0.44%**

Notes:
[1] Number of Participants with Balances in June 2016 calculated as the average of year-end 2015 and 2016.
[2] Total Plan Assets as reported in the Hewitt Performance Review and Investment Manager Evaluations for Q4 2010-2011 and Hewitt Quarterly Investment Reviews for Q4 2012-2015 and Q2 2016.
[3] Fixed, Per Participant Administrative Fee as of year-end.
[4] Total Revenue Sharing estimated based on Plan Assets by Investment Option in Exhibit 2 and Revenue Sharing for each Investment Option in Exhibit 3.
[5] Remaining Required Direct Administrative Fees is zero if Total Administrative Fees are less than Total Revenue Sharing.
[6] Total Investment Costs estimated based on Plan Assets by Investment Option in Exhibit 2 and Expense Ratio for each Investment Option in Exhibit 3.

Sources:
[A] *See* Exhibits 1, 2, and 3.
[B] Master Services Agreement, effective January 1, 2009 (SWY_TR00000674 - SWY_TR00000715, at 694); Amendment to Master Services Agreement, effective July 18, 2011 (SWY_TR00000664 - SWY_TR00000665, at 664); Email from B. Tankovich to M. Boylan, "FW: MSA Amendment," April 27, 2015 (SWY_TR00006427 - SWY_TR00006435, at 427).

Exhibit 5
Safeway, Inc. 401(k) Plan
Benchmarking Analysis of Total Plan Costs
2010-2016

	2010	2011	2012	2013	2014	2015	2016
Safeway, Inc. 401(k) Plan[1,A]	**0.46%**	**0.42%**	**0.42%**	**0.41%**	**0.36%**	**0.45%**	**0.44%**
OHC Plans[2,B]							
Median	0.49%			0.51%		0.33%	
Average	0.53%			0.46%		0.34%	
Min to Max Range	0.36% - 0.73%			0.25% - 0.59%		0.18% - 0.59%	
Hewitt for Safeway Plan[3,C]							
All Plans, Median	0.58%	-	-	-	-	-	-
Plan Assets $1B to $4B, Median	0.39%	-	-	-	-	-	-
Account Balance $25,000 to $50,000, Median	0.64%	-	-	-	-	-	-
Best-Fit Universe, Median	0.51%	-	-	-	-	-	-
NEPC Surveys[4,D]							
All Plans, Median	0.59%	0.58%	0.55%	0.53%	0.52%	0.46%	0.43%
BrightScope/ICI Profiles[5,E]							
Plan Assets $500M to $1B							
Median	-	-	0.45%	0.43%	0.44%	-	-
Average	-	-	0.44%	0.43%	0.43%	-	-
10th to 90th Percentile Range	-	-	0.23% - 0.63%	0.22% - 0.62%	0.22% - 0.61%	-	-
Plan Assets $1B+							
Median	-	-	0.30%	0.29%	0.27%	-	-
Average	-	-	0.33%	0.31%	0.30%	-	-
10th to 90th Percentile Range	-	-	0.16% - 0.52%	0.15% - 0.52%	0.14% - 0.51%	-	-

Exhibit 5
Safeway, Inc. 401(k) Plan
Benchmarking Analysis of Total Plan Costs
2010-2016

	2010	2011	2012	2013	2014	2015	2016
Safeway, Inc. 401(k) Plan[1,A]	**0.46%**	**0.42%**	**0.42%**	**0.41%**	**0.36%**	**0.45%**	**0.44%**
Deloitte/ICI Studies[6,F]							
Plan Assets $500M to $1B							
Median	-	0.51%	-	-	-	-	-
Average	-	0.51%	-	-	-	-	-
10th to 90th Percentile Range	-	0.46% - 0.58%	-	-	-	-	-
With Avg. Account Balance $25,000 to $100,000, Median	-	0.51%	-	-	-	-	-
Plan Assets $1B+							
Median	-	0.38%	-	-	-	-	-
Average	-	0.35%	-	-	-	-	-
10th to 90th Percentile Range	-	0.13% - 0.56%	-	-	-	-	-
With Avg. Account Balance $25,000 to $100,000, Median	-	0.42%	-	-	-	-	-
Plan Assets $500M+							
Median	-	-	-	0.37%	-	-	-
Average	-	-	-	0.41%	-	-	-
10th to 90th Percentile Range	-	-	-	0.24% - 0.67%	-	-	-
With Avg. Account Balance $25,000 to $100,000, Median	-	-	-	0.39%	-	-	-
Participant Count 5,000 to 9,999							
Median	-	0.67%	-	0.55%	-	-	-
Average	-	0.66%	-	0.59%	-	-	-
10th to 90th Percentile Range	-	0.42% - 0.92%	-	0.35% - 0.96%	-	-	-
With Avg. Account Balance $25,000 to $100,000, Median	-	0.68%	-	0.50%	-	-	-
Participant Count 10,000+							
Median	-	0.43%	-	0.39%	-	-	-
Average	-	0.50%	-	0.46%	-	-	-
10th to 90th Percentile Range	-	0.21% - 1.03%	-	0.24% - 0.87%	-	-	-
With Avg. Account Balance $25,000 to $100,000, Median	-	0.46%	-	0.39%	-	-	-
Hewitt for NSHE[7,G]							
All Plans, Average	-	-	0.49%	-	-	-	-
Plan Assets $0.81B to $2.19B, Average	-	-	0.42%	-	-	-	-

Exhibit 5
Safeway, Inc. 401(k) Plan
Benchmarking Analysis of Total Plan Costs
2010-2016

Notes:

[1] *See* Exhibit 4.

[2] The OHC Plans include data from 13 defined contribution plans with either $500 million or more in assets or 5,000 or more participants with balances for which OHC performed analyses of plan costs and fees for administrative services from August 2009 through January 2017. I consider data from August through December of 2009 to be reasonably close to the beginning of the Review Period (i.e., 2010) for inclusion in my benchmarking analysis of the Safeway Plan in 2010, and data from January 2017 to be reasonably close to the end of the Review Period (i.e., 2016) for inclusion in my benchmarking analysis of the Safeway Plan in 2016. When more than one year of data are available for an OHC Plan, each year of data have been used to calculate the median, average, and range of total plan costs and per participant administrative fees.

[3] Hewitt reports "Total Plan Cost," which includes investment management fees and administrative costs (recordkeeping and trustee fees). Survey data are as of December 31, 2010, and include four groups of comparables: 461 defined contribution plans (all plans), 95 plans with assets between $1 billion and $4 billion, 130 plans with average account balance between $25,000 and $50,000, and 19 plans with median assets of $1.6 billion and median number of participants of 38,631.

[4] NEPC reports "Estimated Plan Fees" or "all-in costs," which include investment management fees, recordkeeping fees, and trust and custody services fees. NEPC surveys include data from 113 plans in 2014 and 2015, and 117 plans in 2016.

[5] BrightScope/ICI report plan-weighted "Total Plan Cost," which includes asset-based investment management fees, asset-based administrative and advice fees, and other fees. BrightScope/ICI use data from BrightScope's Defined Contribution Plan Database, which includes audited Form 5500 data from private-sector plans exceeding 100 participants and providing 4 to 100 investment options. BrightScope/ICI surveyed 14,020 plans with $2.5 trillion in total assets for 2012; 39,972 plans with $3.2 trillion in total assets for 2013; and 28,940 plans with $3.2 trillion in total assets for 2014. Figures from the BrightScope/ICI Profile published in 2014 use data from 2012; figures published in 2015 use data from 2013; and figures published in 2016 use data from 2014.

[6] Deloitte/ICI report an "'All-In' fee," which includes fees for investment management, administration, recordkeeping, communication, education, and investment consulting. It does not include fees for specialized participant activities, such as loans. The 2011 Fee Study includes survey responses from 525 plans of all sizes. Approximately 4% of plans had 5,000 to 9,999 participants, 8% of plans exceeded 10,000 participants, 3% of plans had assets between $500 million and $1 billion, and 7% of plans exceeded $1 billion in assets. The 2013 Fee Study includes survey responses from 361 plans of all sizes. Approximately 12% of plans had 5,000 to 9,999 participants, 14% of plans exceeded 10,000 participants, and 19% of plans exceeded $500 million in assets.

[7] Hewitt reports "Total Plan Cost," which includes investment management fees and administrative costs (recordkeeping and trustee fees). Survey data are as of December 31, 2012, and data for two groups of comparables have been shown in the benchmarking analysis: 380 defined contribution plans (all plans) and 82 plans with assets between $0.81 billion and $2.19 billion. Hewitt also reports data for two smaller groups of defined contribution plans: 33 plans with participant counts between 5,500 and 7,500, and 10 plans with "Assets & Participant Count Constraints."

Sources:

[A] *See* Exhibit 4.

[B] *See* Appendix C.

[C] Hewitt Ennisknupp, "401(k) Total Plan Cost Analysis," January 2012 (AON0039831-842).

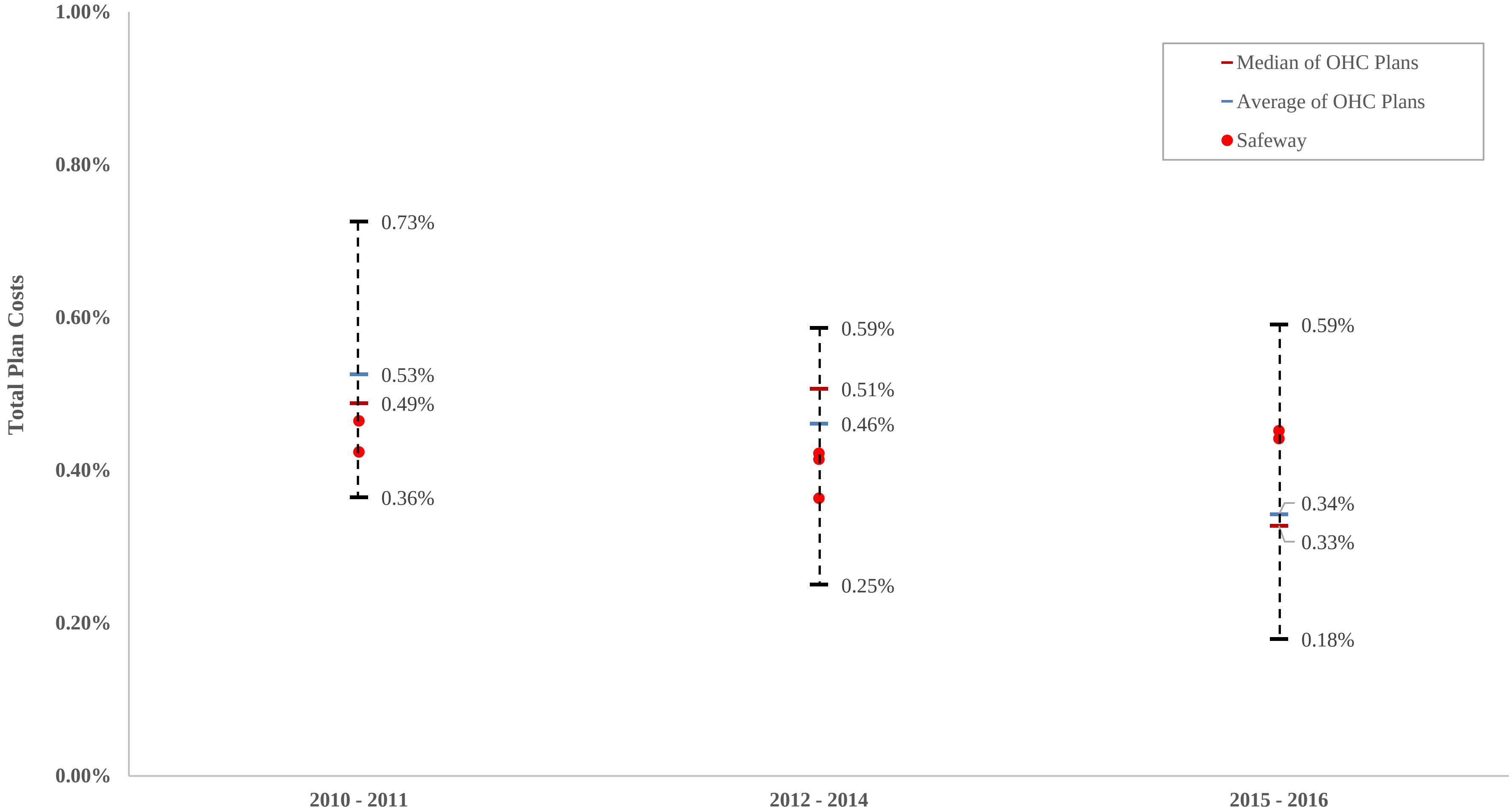
[D] NEPC Defined Contribution Plan & Fee Survey, 2014, 2015; Employee Benefit Advisor, "Retirement Plan Fees Level Out," August 23, 2017 (available at https://www.employeebenefitadviser.com/articles/retirement-plan-fees-level-out); NEPC, “Corporate Defined Contribution Plans Report Highest Number of Plans In a Decade With Fixed Record-Keeping Fees,” September 2016 (available at http://www.nepc.com/press/corporate-defined-contribution-plans-report-highest-number-of-plans-in-a-decade-with-fixed-record-keeping-fees).

[E] BrightScope/ICI, "The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans," December 2014; BrightScope/ICI, "The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2013," December 2015; BrightScope/ICI, "The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2014," December 2016.

[F] Deloitte/ICI, "Inside the Structure of Defined Contribution/401(k) Plan Fees: A Study Assessing the Mechanics of the 'All-In' Fee," November 2011; Deloitte/ICI, "Inside the Structure of Defined Contribution/401(k) Plan Fees, 2013: A Study Assessing the Mechanics of the 'All-In' Fee," August 2014.

[G] Hewitt Ennisknupp, “Total Plan Cost Benchmarking,” Presentation to Nevada System of Higher Education, November 14, 2014.

Exhibit 6
Safeway, Inc. 401(k) Plan vs. OHC Plans
Total Plan Costs



Note:
[1] When more than one year of data are available for an OHC Plan, each year of data have been used to calculate the median, average, and range of total plan costs.
Sources:
[1] OHC Plans.
[2] *See* Exhibit 4.

Exhibit 7
Safeway, Inc. 401(k) Plan
Benchmarking Analysis of Administrative Fees
2010-2016

	2010	2011	2012	2013	2014	2015	2016
Safeway, Inc. 401(k) Plan[1,A]	**$67**	**$65**	**$65**	**$65**	**$65**	**$52**	**$52**
OHC Plans[2,B]							
Median	$94			$84		$45	
Average	$86			$83		$47	
Min to Max Range	$58 - $116			$50 - $110		$26 - $62	
Hewitt for Safeway Plan[3,C]							
All Plans, Median	$102	-	-	-	-	-	-
Plan Assets $1B to $4B, Median	$70	-	-	-	-	-	-
Account Balance $25,000 to $50,000, Median	$93	-	-	-	-	-	-
Best-Fit Universe, Median	$56	-	-	-	-	-	-
NEPC Surveys[4,D]							
All Plans, Median	$103	$103	$92	$80	$70	$64	$57
Hewitt for NSHE[5,E]							
All Plans, Average	-	-	$84	-	-	-	-
Plan Assets $0.81B to $2.19B, Average	-	-	$76	-	-	-	-

Notes:
[1] *See* Exhibit 4.
[2] The OHC Plans include data from 13 defined contribution plans with either $500 million or more in assets or 5,000 or more participants with balances for which OHC performed analyses of plan costs and fees for administrative services from August 2009 through January 2017. I consider data from August through December of 2009 to be reasonably close to the beginning of the Review Period (i.e., 2010) for inclusion in my benchmarking analysis of the Safeway Plan in 2010, and data from January 2017 to be reasonably close to the end of the Review Period (i.e., 2016) for inclusion in my benchmarking analysis of the Safeway Plan in 2016. When more than one year of data are available for an OHC Plan, each year of data have been used to calculate the median, average, and range of total plan costs and per participant administrative fees.
[3] Hewitt reports "Administrative Cost," which includes recordkeeping and trustee fees. Survey data are as of December 31, 2010, and include four groups of comparables: 461 defined contribution plans (all plans), 95 plans with assets between $1 billion and $4 billion, 130 plans with average account balance between $25,000 and $50,000, and 19 plans with median assets of $1.6 billion and median number of participants of 38,631.
[4] NEPC reports "Estimated Annual Cost of Administration," which includes recordkeeping, and trust and custody services fees. NEPC surveys include data from 113 plans in 2014 and 2015, and 117 plans in 2016.
[5] Hewitt reports "Administrative Cost," which includes recordkeeping and trustee fees. Survey data are as of December 31, 2012, and data for two groups of comparables have been shown in the benchmarking analysis: 380 defined contribution plans (all plans) and 82 plans with assets between $0.81 billion and $2.19 billion. Hewitt also reports data for two smaller groups of defined contribution plans: 33 plans with participant counts between 5,500 and 7,500, and 10 plans with "Assets & Participant Count Constraints."

Sources:
[A] *See* Exhibit 4.
[B] *See* Appendix C.
[C] Hewitt Ennisknupp, "401(k) Total Plan Cost Analysis," January 2012 (AON0039831 - AON0039842).
[D] NEPC Defined Contribution Plan & Fee Survey, 2014, 2015; NEPC, “Corporate Defined Contribution Plans Report Highest Number of Plans In a Decade With Fixed Record-Keeping Fees,” September 2016 (available at http://www.nepc.com/press/corporate-defined-contribution-plans-report-highest-number-of-plans-in-a-decade-with-fixed-record-keeping-fees); NEPC, "Defined Contribution Fee Survey Infographic," September 22, 2016, available at http://www.nepc.com/insights/defined-contribution-fee-survey-infographic.
[E] Hewitt Ennisknupp, “Total Plan Cost Benchmarking,” Presentation to Nevada System of Higher Education, November 14, 2014.

Exhibit 8
Safeway, Inc. 401(k) Plan vs. OHC Plans
Per Participant Administrative Fees

Note:
[1] When more than one year of data are available for an OHC Plan, each year of data have been used to calculate the median, average, and range of per participant administrative fees.
Sources:
[1] OHC Plans.
[2] *See* Exhibit 4.

Appendix A

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Summary of Professional Experience

Approximately 37 years of diversified retirement plan consulting and administrative services experience, including working with client companies and retirement plan service providers to ensure the effective management and administration of qualified retirement plan arrangements. Areas of expertise include plan design and consulting, plan cost and administrative fee benchmarking, addressing operational inefficiencies, preparing and evaluating defined contribution plan Requests for Proposals, and enhancing employee education, communications, plan compliance, and fiduciary governance.

Experience

Principal, Orchard Hills Consulting LLC **1/2004 to Present**

- Provides comprehensive retirement and, through partner firms, investment consulting services to a broad range of tax-exempt and for-profit clients. Partner firms for which I serve as a non-employee Registered Investment Representative include Capital Research + Consulting of Pasadena, CA and Fiduciary Partners Investment Consulting of Clearwater, FL.
- Assists clients in the structuring and management of retirement plan service arrangements to ensure reasonable and appropriate fees and services, high levels of employee participation, adherence to legal and regulatory requirements, and continued improvements in the areas of administration and cost management.
- Provides expert witness and consulting services specific to retirement plan fee litigation, including Court testimony with respect to Tussey v. ABB and consulting support provided on behalf of Wells Fargo, American Airlines, Deere & Co., BB&T, Oracle, and Great-West.
- Recently published articles: *"Commentary on Vanderbilt University and Duke University Fee Litigation"* Bloomberg Law Review, December 8, 2016 and *"Lower Cost Clean Shares May Not Provide Expected Benefits to Plan Participants"* Bloomberg BNA Insights, June 28, 2017.

Senior Vice President, Clark Consulting LLC. **5/2002 to 12/2003**

- Managed Midwest office and performed retirement plan consulting, investment advisory, and fee benchmarking projects on behalf of firm clients.
- Left to form Orchard Hills Consulting and maintained consulting relationship with Clark until 2006.

Partner, Arthur Andersen LLC **3/2001 to 5/2002**

- Direct admit Partner to the Human Capital Practice with overall responsibility for retirement and compensation consulting services performed by staff within the Great Lakes Region (seven offices).
- Human Capital Practice acquired by Clark Consulting in May 2002.

Partner, PricewaterhouseCoopers LLC **8/1985 to 3/2001**

- Increasing responsibilities over a 17-year period, including serving as West Region Managing Partner while maintaining overall responsibility for administrative outsourcing services performed for more than 200 clients in the final years of employment.
- Served as relationship manager and lead consultant for multiple defined contribution plans.
- Elected to leave firm due to the sale of the administrative outsourcing practice to Mellon/Buck Consultants.

Appendix A

Education
University of Akron, MBA, Finance.
Muskingum University, BA, Business Administration Summa Cum Laude, With Distinction.

Deposition Testimony in Past Four Years

- Robert Sims, et al., Plaintiffs, v. BB&T Corporation, et al, Defendants, No. 1:15-cv-732-CCE-JEP, deposition date of December 4, 2017.
- Joan Oseslo, et al., Plaintiffs, v. Great-West Capital Management, LLC and Great-West Life & Annuity Insurance Co,, et al., Defendants, No. 16-cv-00230-CMA-MJW and No.16-cv-03162-CMA-MJW; and Duplass, Zwain, Bourgeois, Pfister & Weinstock APLC 401(k) Plan, Plaintiff, v. Great-West Capital Management, Defendant, No.16-cv-01215-CMA-MJW, deposition date of April 13, 2018.

Appendix B
Documents Considered

Description	Bates Start		Bates End
Case Documents			
Lorenz Statements, January 1, 2010 to July 27, 2016	SWY_LZ00000001	-	SWY_LZ00000184
Safeway Inc. 401(k) Plan 408(b)(2) Disclosures of Services and Fees, July 2012 - August 2016	SWY_TR00000018	-	SWY_TR00000436
Amendment to Master Services Agreement, effective October 8, 2015	SWY_TR00000643	-	SWY_TR00000644
Amendment to Master Services Agreement, effective July 1, 2014	SWY_TR00000645	-	SWY_TR00000646
Amendment to the Master Trust Agreement, effective August 28, 2015	SWY_TR00000647	-	SWY_TR00000648
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Amendment Number One to Amendment and Restatement of Safeway Inc. Defined Contribution Plans Master Trust Agreement, effective July 18, 2011	SWY_TR00000669	-	SWY_TR00000673
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Addendum to Qualified Defined Contribution Plan Services Schedule to the Master Services Agreement for Qualified Plans - Plan Expense Arrangement	SWY_TR00000710		SWY_TR00000715
Amendment and Restatement of Master Trust Agreement for the Safeway Inc. Defined Contribution Plans between Safeway Inc. and J.P. Morgan Chase Bank, N.A., effective January 1, 2009	SWY_TR00000716	-	SWY_TR00000751
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Hewitt Ennisknupp, "Global Equity Manager Search Finalists," June 26, 2012	SWY_TR00001707	-	SWY_TR00001886
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Plan Committee Meeting Agenda, April 17, 2012	SWY_TR00001757		
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MFS Investment Management, "MFS Global Concentrated Equity," June 26, 2012	SWY_TR00001802	-	SWY_TR00001859
Aon Hewitt, "InTotal Global Investment Management," May 2013	SWY_TR00002101	-	SWY_TR00002122
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Plan Committee Meeting Agenda, May 21, 2014	SWY_TR00002387		
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Safeway Inc. 401(k) Plan Quarterly Investment Review, Q3 2015	SWY_TR00002766	-	SWY_TR00002826
NFP, "Fiduciary Investment Review for Albertsons, LLC," February 25, 2016	SWY_TR00002938	-	SWY_TR00002990
Safeway Inc. Statement of Defined Contribution Investment Policies and Objectives, December 2005	SWY_TR00003328	-	SWY_TR00003349
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Safeway 401(k) Plan Participant Disclosure Notice, 2011	SWY_TR00003618	-	SWY_TR00003628
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Hewitt Ennisknupp, "Comparative Investment Performance Results (Net of Fees)," April 2011	SWY_TR00005258		
Emerald Advisors, "Safeway Investment Review," 2011 Q1	SWY_TR00005259	-	SWY_TR00005331
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Hewitt Ennisknupp, "Safeway Inc. Update on Hewitt Ennisknupp," March 2011	SWY_TR00005626	-	SWY_TR00005634
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Plan Committee Meeting Agenda, October 23, 2012	SWY_TR00006796		
Plan Committee Meeting Agenda, December 12, 2011	SWY_TR00006853		
Plan Committee Meeting Minutes, August 30, 2011	SWY_TR00006859	-	SWY_TR00006860
Plan Committee Meeting Agenda, August 30, 2011	SWY_TR00006862		
Plan Committee Meeting Minutes, June 8, 2011	SWY_TR00006871	-	SWY_TR00006872
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Plan Committee Meeting Agenda, March 21, 2011	SWY_TR00006900		
Plan Committee Meeting Agenda, November 3, 2010	SWY_TR00006923		
Albertsons Plan Meeting Agenda, May 23, 2016	SWY_TR00006961	-	SWY_TR00006962

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Description	Bates Start	Bates End
NFP, "Provide Web Demo Debrief Executive Summary," July 31, 2015	SWY_TR00008863 -	SWY_TR00008864
NFP, "New Albertsons, Inc. Fiduciary Investment Review Executive Summary," May 23, 2016	SWY_TR00009461 -	SWY_TR00009462
Plan Committee Meeting Minutes, November 19, 2015	SWY_TR00009747 -	SWY_TR00009749
Safeway Inc. 401(k) Plan Quarterly Investment Review, Q1 2014	SWY_TR00019919 -	SWY_TR00019980
Aon Hewitt, "HEK Flash Report," February 3, 2012	SWY_TR00013020	
Hewitt Ennisknupp, "Performance Update," February 29, 2012	SWY_TR00013035 -	SWY_TR00013036
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PIMCO, "Safeway Strategy Review," November 19, 2014	SWY_TR00015611 -	SWY_TR00015636
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Plan Committee Meeting Performance Update, November 30, 2011	SWY_TR00015950 -	SWY_TR00015964
Plan Committee Meeting Minutes, May 3, 2011	SWY_TR00016114 -	SWY_TR00016117
Plan Committee Meeting Minutes, March 21, 2011	SWY_TR00016232 -	SWY_TR00016235
Plan Committee Meeting Performance Update, March 11, 2011	SWY_TR00016357 -	SWY_TR00016362
Plan Committee Meeting Minutes, January 21, 2011	SWY_TR00016371 -	SWY_TR00016374
Plan Committee Meeting Minutes, November 3, 2010	SWY_TR00016375 -	SWY_TR00016378
Hewitt Ennisknupp, "Safeway Inc. Performance Review and Investment Manager Evaluation," Q3 2010	SWY_TR00016379 -	SWY_TR00016497
Plan Committee Meeting Minutes, June 25, 2013	SWY_TR00016513 -	SWY_TR00016514
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Plan Committee Meeting Discussion Guide, April 10, 2013	SWY_TR00016518 -	SWY_TR00016558
Plan Committee Meeting Performance Update, December 31, 2012	SWY_TR00016559 -	SWY_TR00016568
Plan Committee Meeting Minutes, March 8, 2012	SWY_TR00016585 -	SWY_TR00016586
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Plan Committee Meeting Agenda, September 17, 2015	SWY_TR00016627	
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Safeway Inc. Performance Review and Investment Manager Evaluation, Q2 2010	SWY_TR00016877 -	SWY_TR00016992
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Plan Committee Meeting Minutes, December 12, 2011	SWY_TR00017233 -	SWY_TR00017235
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Plan Committee Meeting Performance Update, September 30, 2012	SWY_TR00017374 -	SWY_TR00017387
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Plan Committee Meeting Minutes, April 17, 2012	SWY_TR00017402 -	SWY_TR00017404
Plan Committee Meeting Minutes, October 23, 2012	SWY_TR00017405 -	SWY_TR00017407
Plan Committee Meeting Discussion Guide, December 12, 2013	SWY_TR00017530 -	SWY_TR00017577
Plan Committee Meeting Agenda, April 10, 2013	SWY_TR00017578	
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Plan Committee Meeting Minutes, January 25, 2013	SWY_TR00017580 -	SWY_TR00017582
Plan Committee Meeting Minutes, September 25, 2013	SWY_TR00017583 -	SWY_TR00017586
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Plan Committee Meeting Minutes, September 17, 2015	SWY_TR00018135 -	SWY_TR00018137
Aon, "Albertsons & Safeway DC Investment Structure," March 3, 2016	SWY_TR00018177 -	SWY_TR00018251
Albertsons Plan Meeting Minutes, February 25, 2016	SWY_TR00018252 -	SWY_TR00018257
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Safeway Inc. 401(k) Plan Quarterly Investment Review, Q1 2013	SWY_TR00018401 -	SWY_TR00018469
Safeway Inc. 401(k) Plan Quarterly Investment Review, Q4 2012	SWY_TR00018470 -	SWY_TR00018540
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Safeway Inc. 401(k) Plan Quarterly Investment Review, Q3 2012	SWY_TR00018618 -	SWY_TR00018678
Safeway Inc. Performance Review and Investment Manager Evaluation, Q1 2012	SWY_TR00018679 -	SWY_TR00018802
Safeway Inc. Performance Review and Investment Manager Evaluation, Q3 2011	SWY_TR00018803 -	SWY_TR00018938

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Safeway Inc. Performance Review and Investment Manager Evaluation, Q4 2011	SWY_TR00018947	-	SWY_TR00019069
Safeway Inc. Performance Review and Investment Manager Evaluation, Q2 2011	SWY_TR00019070	-	SWY_TR00019174
Safeway Inc. 401(k) Plan Quarterly Investment Review, Q4 2014	SWY_TR00019176	-	SWY_TR00019237
Safeway Inc. 401(k) Plan Quarterly Investment Review, Q3 2013	SWY_TR00019238	-	SWY_TR00019299
Safeway Inc. 401(k) Plan Quarterly Investment Review, Q4 2013	SWY_TR00019300	-	SWY_TR00019361
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Albertsons Plan Meeting Minutes, March 12, 2015	SWY_TR00019799	-	SWY_TR00019802
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J.P. Morgan Retirement Plan Services Payment Authorization Form, November 21, 2013	SWY_TR00038279	-	SWY_TR00038283
J.P. Morgan Retirement Plan Services Payment Authorization Form, December 13, 2013	SWY_TR00038284	-	SWY_TR00038286
J.P. Morgan Retirement Plan Services Payment Authorization Form, July 17, 2014	SWY_TR00038287	-	SWY_TR00038291
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J.P. Morgan Retirement Plan Services Payment Authorization Form, October 18, 2012	SWY_TR00038434	-	SWY_TR00038436
Empower Retirement Invoice, July 21, 2015	SWY_TR00038437		
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Empower Retirement Invoice, May 23, 2016	SWY_TR00038476	-	SWY_TR00038481
J.P. Morgan Retirement Plan Services Payment Authorization Form, January 13, 2012	SWY_TR00038539	-	SWY_TR00038541
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J.P. Morgan Retirement Plan Services Payment Authorization Form, January 11, 2013	SWY_TR00038545	-	SWY_TR00038553
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J.P. Morgan Retirement Plan Services Payment Authorization Form, August 26, 2011	SWY_TR00038561	-	SWY_TR00038564
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J.P. Morgan Retirement Plan Services Payment Authorization Form, May 9, 2011	SWY_TR00038568	-	SWY_TR00038570
J.P. Morgan Retirement Plan Services Payment Authorization Form, April 8, 2010	SWY_TR00038571	-	SWY_TR00038574
J.P. Morgan Retirement Plan Services Payment Authorization Form, August 3, 2010	SWY_TR00038575	-	SWY_TR00038578
J.P. Morgan Retirement Plan Services Payment Authorization Form, October 19, 2010	SWY_TR00038579	-	SWY_TR00038582
J.P. Morgan Invoices, November 28, 2011	SWY_TR00038589	-	SWY_TR00038592
PIMCO Invoice, April 20, 2015	SWY_TR00038596	-	SWY_TR00038598
Empower Retirement Invoice, May 23, 2016	SWY_TR00038616	-	SWY_TR00038618
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J.P. Morgan Retirement Plan Services Payment Authorization Form, October 18, 2012	SWY_TR00038670	-	SWY_TR00038672
Memorandum re. Master Trust Agreement for the Safeway Inc. Defined Contribution Plans, effective July 16, 2011	SWY_TR00038681		
J.P. Morgan Invoice, May 3, 2011	SWY_TR00038682		
J.P. Morgan Invoice, March 11, 2011	SWY_TR00038683		
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Albertsons Companies 401(k) and Non-Qualified Provider Search Analysis Executive Summary, September 23, 2015	SWY_TR00038840	-	SWY_TR00038843
Curcio Webb, "Investment Advisor Search Proposal," December 21, 2015	SWY_TR00040017	-	SWY_TR00040029
Plan Committee Meeting Agenda, June 26, 2015	SWY_TR00040049		
Curcio Webb, "Albertsons Investment Advisory Services RFP Bidder Fee Proposal Summary Best and Final Offers," August 17, 2016	SWY_TR00040085	-	SWY_TR00040087
Plan Committee Meeting Agenda, November 19, 2015	SWY_TR00041807		
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NFP, "Fiduciary Investment Review for Albertsons, LLC," May 23, 2016	SWY_TR00051470	-	SWY_TR00051530
NFP, "Fiduciary Investment Review Executive Summary for Albertsons, LLC," May 23, 2016	SWY_TR00058584	-	SWY_TR00058585
Albertsons Addendum to Meeting Minutes, March 14, 2016	SWY_TR00058895	-	SWY_TR00058896
Plan Committee Meeting Agenda, December 18, 2013	SWY_TR00061364		
Email from B. Tankovich to K. Forsythe, “FW: 401k Amendment to the MSA,” September 2, 2014	SWY_TR00063439	-	SWY_TR00063445
Email from B. Tankovich to M. Boylan, “FW: MSA Amendment,” April 27, 2015	SWY_TR00006427	-	SWY_TR00006435

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Description	**Bates Start**	**Bates End**
Safeway Billing Summary 2010 Q2.xls	SWY_TR00038676	
Safeway Billing Summary 2010 Q3.xls	SWY_TR00038677	
Safeway Billing Summary 2011 Q1.xls	SWY_TR00038678	
Safeway Billing Summary 2011 Q2.xls	SWY_TR00038679	
Safeway Billing Summary 2011 Q3.xls	SWY_TR00038680	
Aon, "Albertsons & Safeway DC Investment Structure," March 3, 2016	AON0025003 -	AON0025077
Hewitt Ennisknupp, "401(k) Total Plan Cost Analysis," January 2012	AON0039831 -	AON0039842
Master Consulting Agreement, effective June 1, 2004	AON0042140 -	AON0042146
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Vanguard, Confirmation Correspondence with Plaintiff Lorenz, August 18, 2016	LORENZ_00000009	
Safeway Inc. 401(k) Plan Fee and Investments Participant Disclosure, 2016	LORENZ_00000014 -	LORENZ_00000016
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Safeway 401(k) Plan Participant Disclosure Notice	LORENZ_00000040 -	LORENZ_00000041
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Terraza Letter to Empower, February 3, 2015	TERRAZA_000064	

Deposition Transcripts and Associated Exhibits

Deposition of Dennis M. Lorenz, April 11, 2018, and Exhibits Thereto
Deposition of Lisa Lynn Montalvo, April 13, 2018, and Exhibits Thereto
Deposition of Melissa Plaisance, April 3, 2018, and Exhibits Thereto
Deposition of Maria Karla Terraza, April 20, 2018, and Exhibits Thereto

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Description	Bates Start	Bates End
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Data

OHC Plans

Appendix C
Safeway, Inc. 401(k) Plan
Overview of OHC Plans
August 2009 - January 2017 [1]

	Benchmark Years						
	2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Comparator 1							
Total Plan Assets (millions)					$554		
Participants With Balances					4,852		
Average Participant Balance					$114,173		
Company Stock Fund Percentage					N/A		
Administrative Fee Per Participant					**$84.00**		
Total Plan Cost					**0.59%**		
Comparator 2							
Total Plan Assets (millions)	$1,516						
Participants With Balances	20,244						
Average Participant Balance	$74,864						
Company Stock Fund Percentage	12.10%						
Administrative Fee Per Participant	**$101.79**						
Total Plan Cost	**0.48%**						
Comparator 3							
Total Plan Assets (millions)					$749		
Participants With Balances					15,803		
Average Participant Balance					$47,377		
Company Stock Fund Percentage					N/A		
Administrative Fee Per Participant					**$100.85**		
Total Plan Cost					**0.57%**		
Comparator 4							
Total Plan Assets (millions)	$652		$887			$1,252	
Participants With Balances	6,412		6,908			6,729	
Average Participant Balance	$101,680		$128,431			$185,990	
Company Stock Fund Percentage	13.39%		10.11%			9.16%	
Administrative Fee Per Participant	**$115.79**		**$110.00**			**$61.70**	
Total Plan Cost	**0.36%**		**0.39%**			**0.27%**	
Comparator 5							
Total Plan Assets (millions)	$324		$457				$688
Participants With Balances	5,459		5,971				7,216
Average Participant Balance	$59,277		$76,518				$95,280
Company Stock Fund Percentage	6.88%		6.97%				7.07%
Administrative Fee Per Participant	**$60.00**		**$50.00**				**$47.00**
Total Plan Cost	**0.50%**		**0.51%**				**0.38%**

Appendix C
Safeway, Inc. 401(k) Plan
Overview of OHC Plans
August 2009 - January 2017 [1]

	Benchmark Years						
	2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Comparator 6							
Total Plan Assets (millions)			$844			$1,072	
Participants With Balances			6,666			6,617	
Average Participant Balance			$126,644			$161,943	
Company Stock Fund Percentage			N/A			20.27%	
Administrative Fee Per Participant			**$72.00**			**$60.00**	
Total Plan Cost			**0.25%**			**0.19%**	
Comparator 7							
Total Plan Assets (millions)	$283						
Participants With Balances	13,595						
Average Participant Balance	$20,816						
Company Stock Fund Percentage	N/A						
Administrative Fee Per Participant	**$58.46**						
Total Plan Cost	**0.61%**						
Comparator 8							
Total Plan Assets (millions)							$5,220
Participants With Balances							36,143
Average Participant Balance							$144,437
Company Stock Fund Percentage							4.81%
Administrative Fee Per Participant							**$25.50**
Total Plan Cost							**0.25%**
Comparator 9							
Total Plan Assets (millions)	$373						$735
Participants With Balances	11,001						14,437
Average Participant Balance	$33,951						$50,907
Company Stock Fund Percentage	N/A						N/A
Administrative Fee Per Participant	**N/A**						**N/A**
Total Plan Cost	**0.73%**						**0.59%**
Comparator 10							
Total Plan Assets (millions)						$246	$308
Participants With Balances						9,150	12,381
Average Participant Balance						$26,848	$24,847
Company Stock Fund Percentage						N/A	N/A
Administrative Fee Per Participant						**$43.61**	**$40.84**
Total Plan Cost						**0.42%**	**0.33%**

Appendix C
Safeway, Inc. 401(k) Plan
Overview of OHC Plans
August 2009 - January 2017 [1]

	Benchmark Years						
	2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Comparator 11							
Total Plan Assets (millions)							$929
Participants With Balances							8,269
Average Participant Balance							$112,367
Company Stock Fund Percentage							N/A
Administrative Fee Per Participant							**$55.00**
Total Plan Cost							**0.47%**
Comparator 12							
Total Plan Assets (millions)						$4,701	
Participants With Balances						25,177	
Average Participant Balance						$186,716	
Company Stock Fund Percentage						N/A	
Administrative Fee Per Participant						**$43.08**	
Total Plan Cost						**0.18%**	
Comparator 13							
Total Plan Assets (millions)		$652					
Participants With Balances		8,731					
Average Participant Balance		$74,707					
Company Stock Fund Percentage		N/A					
Administrative Fee Per Participant		**$93.87**					
Total Plan Cost		**0.47%**					

Notes:
[1] The OHC Plans include data from 13 defined contribution plans with either $500 million or more in assets or 5,000 or more participants with balances for which OHC performed analyses of plan costs and fees for administrative services from August 2009 through January 2017. I consider data from August through December of 2009 to be reasonably close to the beginning of the Review Period (i.e., 2010) for inclusion in my benchmarking analysis of the Safeway Plan in 2010, and data from January 2017 to be reasonably close to the end of the Review Period (i.e., 2016) for inclusion in my benchmarking analysis of the Safeway Plan in 2016.
[2] The OHC Workbooks reflect the work of OHC at the time it provided consulting services to the plans. The data that appear in this Appendix C were not modified for purposes of my work in the Safeway matter, and the only changes made to the OHC Workbooks were for purposes of anonymizing client names and sensitive information. All methodologies used to estimate total plan costs and per participant administrative fees for the OHC Plan were consistent with industry standards and practices. However, there may be minor variations due to specifics of the engagement for which OHC was asked to provide consulting services.

Sources:
[1] OHC Workbooks.

CERTIFICATE OF SERVICE

I, Angel L. Garrett, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am employed in the City and County of San Francisco, California. My business address is One Embarcadero Center, 12th Floor, San Francisco, California 94111. On the date indicated below, I served the within:

DEFENDANTS' FEDERAL RULE OF CIVIL PROCEDURE 26(a)(2) DISCLOSURE OF EXPERT WITNESSES

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☑ BY ELECTRONIC MAIL: On the above-mentioned date, I served a full and complete copy of the above-referenced document[s] by electronic mail to the person[s] at the email address[es] indicated.

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s) were printed on recycled paper, and that this Certificate of Service was executed by me on May 22, 2018, at San Francisco, California.

/s/Angel L. Garrett
Angel L. Garrett